

Cape Fear Public Transportation Authority (dba Wave Transit)

Wilmington, North Carolina

Request for Proposals (RFP) *for* **Short Range Plan Development** *February 23, 2023*



Due Date: March 24, 2022
Time: 4:00 PM EST
Receipt Location: Wave Transit Administrative Offices
505 Cando Street
Wilmington, NC 28405
or
jdodson@wavetransit.com

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Cape Fear Public Transportation Authority
Request for Proposals
CONSULTING SERVICES
Short Range Transit Plan Contract # 23-07

Proposals are hereby requested by the Cape Fear Public Transportation Authority (Wave Transit or Authority) for Consulting Services- Short Range Plan Development

1.0 SUBMISSION OF PROPOSALS & PROPOSED PROJECT(S)

Pursuant to the General Statutes of North Carolina, qualification statements addressed to Jon Dodson, Deputy Director, Cape Fear Public Transportation Authority, PO Box 12630, Wilmington, North Carolina, 28405, or sent digitally to jdodson@wavetransit.com and marked:

CONSULTING SERVICES - SHORT RANGE TRANSIT PLAN (SRTP) DEVELOPMENT

will be received until 4:00 p.m. EST, Friday, March 24, 2023.

Instructions for submitting qualifications statements may be obtained from Wave Transit, 505 Cando Street, Wilmington, NC 28405 from 8:00 a.m. to 4:30 p.m., Monday through Friday. The Authority reserves the right to reject any or all proposals.

Applicants may submit proposals via electronic means to jdodson@wavetransit.com or to the address listed above. The responsibility for submitting proposals (including all documents requested herein) are solely and strictly that of the applicant. The Authority is not responsible for delays in the delivery of the mail or delays caused by any other occurrence.

The Cape Fear Public Transportation Authority does not discriminate on the basis of race, gender, ethnicity, age, national origin, religion or disability in its employment opportunities, programs, services, contracting opportunities or activities. It is the Authority's policy to ensure compliance with the Title VI of the Civil Rights Act of 1964 in its contracting opportunities. The Authority's Title VI Policy is available at:

<https://www.wavetransit.com/wp-content/uploads/2020/11/November-2020-Title-VI-Program.pdf>.

REQUEST FOR PROPOSALS
CONSULTING SERVICES - SHORT RANGE TRANSIT PLAN DEVELOPMENT CONTRACT # 23-07

Pursuant to the General Statutes of North Carolina, qualification statements addressed to Jon Dodson, Deputy Director, Cape Fear Public Transportation Authority, Post Office Box 12630, 505 Cando Street, Wilmington, North Carolina, 28405, and labeled "**Consulting Services- Short Range Transit Plan Development,**" will be received until 4:00 p.m. EST, Friday, March 24, 2023, at which time they will be opened. Instructions and specifications for submitting qualifications may be obtained from Wave Transit, 505 Cando Street, Wilmington, NC 28405 from 8:00 a.m. to 4:30 p.m., Monday through Friday. The Authority reserves the right to reject any or all proposals. The RFP can be accessed at <https://www.wavetransit.com/procurement/>.

The Cape Fear Public Transportation Authority does not discriminate on the basis of race, gender, ethnicity, age, national origin, religion or disability in its employment opportunities, programs, services, contracting opportunities or activities.

Jon Dodson
Deputy Director
ADVERTISED: February 23, 2023

2.0 RFP POSTPONEMENT AND AMENDMENT

The Authority may postpone the deadline for submitting proposals and the opening of proposals and may revise or amend the RFP at any time up to the deadline for submitting proposals. Such changes, revisions and amendments, if any, shall be announced to each prospective applicant by written addenda to this RFP. Applicants are requested to contact the Authority's Deputy Director, if upon review, material errors are found. Errors must be pointed out before the deadline for submitting proposals to allow time for review and subsequent clarifications by the Authority. In any case, the deadline for submitting proposals shall be at least seven (7) calendar days after the last addendum, and the addenda shall include an announcement, if applicable, of the new deadline for submitting qualifications.

3.0 REQUESTS FOR ADDITIONAL INFORMATION

Firms requiring additional information may contact the Deputy Director who will respond to questions and supply required information. Final requests for additional information or clarification should be received in writing by the close of business, 5:00 pm, on Monday, March 6, 2023. A final addendum will be issued by 5:00 pm on Wednesday, March 8, 2023. All contact should be directed to:

Jon Dodson, Deputy Director
Cape Fear Public Transportation Authority
P.O. Box 12630
Wilmington, NC 28405
(910) 202-2035
(910) 343-8317 (fax)
jdodson@wavetransit.com

The Authority will send all requests for information and responses in writing via email to all known potential Applicants so that all parties have the same information. Any spoken communication given is not binding upon the Authority unless and until it is communicated in written form.

IMPORTANT - PLEASE NOTE: The Cape Fear Public Transportation Authority is an independent body politic and corporate as defined by North Carolina General Statute 160A Article 25. All inquiries regarding this proposal must be directed to the designated contact listed above. Approval of any contract resulting from this RFP, if exercised, will be made by the Authority. The decision of the Authority will be final. Proposers who fail to follow this directive are subject to disqualification.

4.0 FUNDING AND TERMS

Any contract resulting from this RFP may be subject to a financial assistance contract/agreement between the Authority and the North Carolina Department of Transportation (NCDOT), and between the Authority and the U.S. Department of Transportation and Federal Transit Administration (FTA). The contract shall be governed by all applicable state and federal regulations. The Authority shall negotiate a contract with the highest qualifying firm for short range transit plan development at compensation set forth in this solicitation.

5.0 AGENCY BACKGROUND AND DESCRIPTION

The Cape Fear Public Transportation Authority (dba Wave Transit) provides public transportation in Southeastern North Carolina. The current service area of Wave Transit is 230 square miles including all of New Hanover County. Wave Transit has authority to serve an area up to 30 miles outside the limits of New Hanover County (County), as extended from time to time.

Wave Transit provides public transportation for New Hanover County via fixed-route, paratransit, and microtransit services. These services provide a vital connection to employment, education, medical appointments, and leisure trips for the nearly 235,000 people living in the County.

In 2019, Wave had 1.3 million trips across their services. In 2021, Wave had 600,000 trips. Presently, Wave is still 40% below our average riders per hour as compared to pre-COVID.

In 2004 the City of Wilmington and New Hanover County merged their public transportation systems into the regionally consolidated Cape Fear Public Transportation Authority (Wave Transit). The Authority operates within the guidelines established under North Carolina General Statute 160A Article 25. The Authority is an independent local government.

The Authority is governed by nine members comprised of City and County staff, as well as elected and appointed officials. The Authority provides directly operated Paratransit and contracted fixed route services.

As a public transit agency, the Authority occasionally requires outside assistance in meeting the requirements of funding agencies. These services include professional consultation with contractors which have expertise beyond the capabilities of the Authority and its professional staff.

6.0 SCOPE OF WORK

The Authority is seeking a qualified consultant to develop a Short Range Transit Plan for the fixed-route bus system, including the free downtown trolley, microtransit zones, and the fixed-route Seahawk Shuttle system in which the Authority operates for the University of North Carolina Wilmington. The Authority most recently completed a Short Range Transit Plan in 2017, which served as a guide for the Authority's transit planning efforts. The Authority is seeking consultant services to provide recommendations for service improvements for FY2024-FY2028 that are comprehensive, fiscally constrained, and implementable according to a timeframe. The primary objective of the analysis is to improve the efficiency and effectiveness of the Authority's fixed-route system as to better serve the public transportation needs of the Cape Fear Region, without increasing the operating budget for the Authority. The final plan will be compliant with short range planning requirements of FTA and NCDOT. Consultants are expected to utilize adopted industrywide planning methods and practices in preparing the plan.

6.1 PROJECT TASKS

The following tasks are recommended for the success of the project. The proposal should explain the consultant's approach to the project and should include all appropriate information for consideration in the proposal. The final scope of services for this project will be determined during the initial meeting between the consultant and the Authority.

6.1.1 Project Management

- a. Biweekly calls between the Consultant and the project manager to ensure progression.

6.1.2 Board Engagement and Education

- a. Ensure appropriate framework for developing the various scenarios to best meet community needs, including addressing policy implications amidst financial challenges.
- b. Determine the preferred balance of frequency and coverage options.
- c. Additional workshops may recur and may be done remotely or in person, depending on the needs.

6.1.3 Public Participation

- a. Public participation is critical to the success of the Short-Range Transit Plan. Public participation at various stages of the project will ensure that stakeholders and the public are able to provide input for consideration and inclusion in the development of the plan. The following events are suggested to be included in the final public participation plan, which will be determined during the initial meetings between the selected consultant and Authority staff:
 - i. Kick Off Event
The purpose of the Kick-Off Event is to announce to employees, customers and the community at large that the consultant will be working on this project. The event will introduce the consultant to the Authority. The expectations and scope for the Kick-Off Event will be determined by the consultant and the Authority.
 - ii. Public Information Meetings
The purpose of the Public Information Meetings is to keep customers and the public informed about the consultant's progress. The public meetings also provide the public the opportunity to present ideas and give feedback to the consultant and to the Authority. The consultant should provide creative ideas on how to effectively collect ideas from the public for these public information meetings. The consultant should propose the number of meetings and timing of meetings to the Authority.

6.1.4 Local Participation

- a. The consultant will present the results of completed milestones with staff and appropriate stakeholders. This will allow local stakeholders to remain informed on the progress of the SRTP and ensure the final report serves the needs of the community and is implementable. The Authority will assist with identifying stakeholders for each milestone and will invite stakeholders to attend the stakeholder meetings. Stakeholders may include Authority Board members and Committee members, among others. Authority staff will be available to assist the consultant in completing the tasks associated with the SRTP.

6.1.5 Analysis of Current Service

- a. Provide a performance analysis of the existing fixed-route transit service including UNCW Seahawk Shuttle services.
- b. Examine the efficiency and effectiveness of the existing fixed-route transit service.
- c. Identify how riders are currently using the system (including transfers) through various methods including community meetings and rider surveys.
- d. Develop route profiles for each service.

6.1.6 Staff Engagement

- a. Staff level workshop with administrative and operational representatives to talk through existing conditions and concerns.
- b. A follow-up workshop with the same staff to address findings and proposed recommendations.

6.1.7 Community Needs Analysis

- a. Examine and describe travel patterns of customers within the Authority's designated service area.
- b. Identify transit supportive areas, origins, and destinations.
- c. Develop Market Profiles by Route.

6.1.8 Review of Service Performance Measures and Standards

- a. Review the current service standards and performance measures.
- b. Provide recommendations for service measures and standards and provide a methodology for ongoing performance evaluation.

6.1.9 Service Improvements Analysis

- a. Identify gaps and duplicative transit services.
- b. Identify ways to improve the transit experience and increase ridership
- c. Host a series of public information meetings to collect public comment on results of analysis of current service, needs analysis, and service improvements analysis.

6.1.10 Develop Service Alternatives

- a. Develop recommended service alternatives that address the issues identified in the congruency analysis, including Title VI analyses with any proposed change. Examples include:
 - i. New routes, realignment of routes, discontinued routes
 - ii. Coordinated services with other agencies
 - iii. Service or frequency reductions
 - iv. Capital improvements for bus stop facilities at transfer locations
 - v. New service design concepts
- b. Evaluate each of the alternatives according to the Authority's Goals, Objectives, and Service Standards.

6.1.11 Develop Marketing Strategies

- a. Develop marketing strategies to promote the Authority's programs and potential revisions to existing services upon completion of the plan.

6.1.12 Develop Implementation and Financial Analysis for the Draft Plan

- a. Provide a fiscally constrained plan with an implementation plan for the service recommendations according to a timeframe, including assumptions of reductions, assuming based on neutral funding, and assumptions based on moderate funding.

6.1.13 Draft Plan

- a. Host a public information meeting to collect public comment on Draft Plan.
- b. Present Draft Plan to the Authority's Board of Directors.

6.1.14 Final Report

- a. Digital and ten (10) bound and printed final copies issued to Wave Transit.

7.0 GIS DATA

- a. The consultant should provide a finalized, clean and organized set of GIS Data to include:
 - i. A File Geodatabase with all data sources used for analysis and creation of report maps complete with metadata
 - ii. Map packages or .mxd files for all report maps

8.0 RESOURCES

The Authority will provide available data that will assist the consultant in meeting the objectives of the project. The following data can be provided and comes from various sources:

- GIS layers
 - Existing routes and passenger amenities
- Surveys
- Service Standards
 - Fixed route
 - Passenger amenities
- Plans
 - 2012 Short Range Transit Plan
 - 2017 Short Range Transit Plan
- Ridership data
 - GFI farebox and NTD sampling data
 - APC data
- On-time performance data
 - AVL data (all reliable data)
- Performance
 - Service and financial performance – system, route
- Service Characteristics
 - Route schedules
 - Route lengths
 - Route running times
 - Span of service
 - Days in operation
 - Fare structure
 - Bus equipment and fleet utilization
- Organization structure
- Authority Mission and Goals
- Financial Data

The following data may be available, and the Authority can assist with gaining access to it, if necessary:

- GIS layers
 - Land uses – residential density, employment density, transit centers
 - Demographics
- Street network

9.0 ESTIMATED TIMELINE

9.0.1	RFP advertised	February 23, 2023
9.0.2	Final questions due	March 6, 2023
9.0.3	Final addendum issued	March 8, 2023
9.0.4	Proposals due	March 24, 2023
9.0.5	Presentations from selected consultants	March 27-30, 2023
9.0.6	Anticipated award	March 31, 2023
9.0.7	Notice to proceed/contract commencement	April 2023

10.0 GENERAL SPECIFICATIONS & INSTRUCTIONS TO BIDDERS

10.1 General

It is the intent of this request to obtain proposals for development of the Authority's five year short range transit plan in accordance with the requirements of this solicitation, Federal, State and local ordinances and any other jurisdictional compliance. A copy of the proposal must be submitted electronically to the Authority via email to: jdodson@wavetransit.com. The electronic qualification submission must be in Adobe Portable Document Format (PDF). Proposals may also be submitted to Jon Dodson, Deputy Director, Cape Fear Public Transportation Authority, 505 Cando Street, Wilmington, North Carolina, 28405 or jdodson@wavetransit.com and marked "**CONSULTING SERVICES-SHORT RANGE TRANSIT PLAN**," no later than the time and date specified in this solicitation.

10.2 Proposer Qualifications

By responding to this RFP, proposer warrants and assures that the firm or individual is qualified to meet the scope outlined herein. Proposer warrants that employees who participate in this project will be compensated in accordance with the law. Applicable insurance is a requirement of this contract for Firms as specified in Section 11.10.16.

10.3 Marking of Bid Envelopes

Proposals must be contained in a sealed envelope or box, plainly marked, showing the bid name, date, time for opening bids and the bidder's name.

10.4 Late Bids Not Considered

Responses to this RFP received after the stipulated bid opening date and time will not be considered.

10.5 Award

Award shall be made to the firm or individual that is determined by the Authority to be most qualified and cost effective to undertake the project. Once a firm or individual has been determined to be most qualified and cost effective, the Authority will enter into a contract with the selected firm.

10.6 Determination of Award

Initial evaluation of submittals will be judged using the following criteria:

The proposer's current workload will be closely evaluated in the capacity to perform in a reasonable timeframe category. Selected firms may be requested to make a presentation to the Authority, its Planning and Operations Committee or staff. Costs associated with attendance at any required presentation will be exclusively borne by the proposing firm. Participation of local professionals is encouraged.

Qualification & experience of firm and team	45 points
Cost	30 points
Client references	10 points
Capacity to perform in a reasonable timeframe	10 points
DBE Considerations	5 points
Total	100 points

10.7 Contract Length

This solicitation is expected to result in a contract for a period necessary to complete the scope of work as outlined in this document.

10.8 Invoicing

Monthly invoicing for work completed through the last day of the preceding month should be presented to the Authority for payment. Reimbursement will not be remitted for work in process or incomplete. Advance payment is not authorized.

10.9 Schedule

Wave Transit is proposing the following schedule, which is subject to change by addendum at any time.

<i>10.9.1</i>	RFP Advertised	February 23, 2023
<i>10.9.2</i>	Final questions due	March 6, 2023
<i>10.9.3</i>	Final addendum issued	March 8, 2023
<i>10.9.4</i>	Proposals due	March 24, 2023
<i>10.9.5</i>	Presentations from selected consultants	March 27-30,2023
<i>10.9.6</i>	Anticipated award	March 31, 2023
<i>10.9.7</i>	Notice to proceed/contract commencement	April 2023

10.10 Required Proposal Contents and Submissions

Submitted proposals must include the required items and follow the format outlined below. Instructions for each exhibit are provided. There is no limitation on proposal size. Graphic illustrations may be included in the proposal. Information submitted is to be relevant to this RFP. Brochures and other promotional materials may not be substituted for submitting the requested forms or information. The forms supplied, or identical format, shall be used to provide a uniform response to the information requested. Proposals that do not follow the listed format or fail to include the required material may be removed from consideration. Each of the following items must be included in each submitted proposal in sufficient detail to enable the Authority to make a determination as to the responsiveness of the proposer. Please make certain that all items are completed and labeled as instructed. Material submitted with a proposal will not be returned:

- 10.10.1 **Executive Summary**
An Executive Summary of no more than two (2) pages in length is required. The Executive Summary will not require a specific set of submission guidelines but should provide a brief overview of each item on the Submission Checklist, at a minimum.
- 10.10.2 **Cover Letter**
On company letterhead, briefly introduce the firm. List the contents of the proposal, i.e., exhibits and any optional items by title. Do not list promotional material. Provide the name of a contact person(s) with email address and telephone and facsimile (FAX) numbers. The Authority will only correspond with the contact person(s) designated in the cover letter. The letter must be signed by an individual authorized to commit the firm's personnel and financial resources to the project and to execute legal documents on behalf of the firm.
- 10.10.3 **History of Company**
Please provide a brief history of the firm, describing experience, size, and location(s).
- 10.10.4 **Experiences and References**
Provide a list of five (5) current and/or former clients as references. Indicate the dates and length of time the firm has served each client, and describe the service(s) provided, the size of the operation, and any other relevant factors. Include the name and telephone number of a contact person for each current and former client listed.
- 10.10.5 **Project Team**
Describe how your firm will support efforts with Wave Transit and any proposed subcontractors. Discuss the organizational resources and services that your company will provide as part of the agreement, and describe other services your firm can provide at additional cost. Provide an overview of each employee of the company that will be involved with the project.
- 10.10.6 **Timeline**
Provide a proposed timeline for plan development, inclusive of public outreach efforts, and completion. Assume notice to proceed issued as outlined in 11.9 of this solicitation.
- 10.10.7 **Lobbying Certification**
(Attachment A)
- 10.10.8 **Certificate of Debarment & Suspension**
(Attachment B)
- 10.10.9 **Pricing Sheet**
(Attachment C)
- 10.10.10 **Acknowledgement of Addenda**
(Attachment D)
- 10.10.11 **Legal Status & Evidence of Authority**
(Attachment E)
- 10.10.12 **North Carolina E-Verify Status**
(Attachment F)
- 10.10.13 **Disadvantaged Business Enterprise**
(Attachment G)
- 10.10.14 **Proposal Submission Form**
(Attachment H)

Failure to submit any of the required submissions will be considered non-responsive to the RFP and the proposer will not be considered for award.

10.11 Addenda

The Authority shall not be responsible for any oral instructions made by employees or officers of the Authority in regard to the RFP. Any changes to the RFP will be in the form of an Addendum, which will be mailed or delivered electronically to all bidders who are listed with the Authority as having received the invitation of any other bidder who requests an Addendum.

10.12 Taxes

The Cape Fear Public Transportation Authority is exempt from and will not pay federal taxes where applicable. An exemption certificate will be furnished upon request. North Carolina and local sales tax shall be shown as a separate item. Sales tax will not be a consideration in the award.

11.0 REQUIRED CLAUSES

11.1 General

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (21), dated October 1, 2014, FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R part 1201, dated December 19, 2014, will supersede and apply in lieu of U.S. DOT's common grant rules, 49 C.F.R. parts 18 and 19, State and Local Governments and Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations and any subsequent amendments or revisions thereto.

THE FOLLOWING MAY BE USED SYNONYMOUSLY:

"BIDDER" AND "CONTRACTOR"

"PURCHASER" AND "OWNER" "RECIPIENT" AND "AUTHORITY"

Definitions

Third Party Agreement, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following agreements, such as:

- (1) Third party contracts,
- (2) Leases,
- (3) Third party subcontracts; and
- (4) Other similar arrangements or agreements.

Third Party Participant, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following participants, such as:

- (1) Third party contractors,
- (2) Lessees,
- (3) Third party subcontractors, and
- (4) Other participants in the Project

11.2 No Federal Government Commitment or Liability to Third Parties

11.2.1 The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and will not be

subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- 11.2.2 The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause will not be modified, except to identify the subcontractor who will be subject to its provisions.

11.3 Ethics & Conflict of Interest

Code or Standards of Conduct

At a minimum, the Authority agrees to, and assures that its Subrecipients will, establish and maintain a written Code or Standards of Conduct that:

11.3.1 Applicability

Applies to the individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest:

- (a) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement,
- (b) The immediate family members or partners of those listed in Section 3.a(1)(a) of the Master Agreement, and
- (c) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed in Sections 3.a(1)(a) and (b) of the Master Agreement,

11.3.2 Prohibitions

Prohibits those individuals listed above in Section 3.a(1) of the Master Agreement from the following:

- (a) Third Party Agreements: Engaging in any activities involving the Recipient or any of its Subrecipients' present or potential Third Party Participants at any tier, including selection, award, or administration of a third party agreement in which the individual has a present or potential financial or other significant interest, and
- (b) Gift Acceptance: Accepting a gratuity, favor, or anything of monetary value from a present or potential Third Party Participant in the Recipient's Underlying Project, unless the gift is unsolicited, and has an insubstantial financial or nominal intrinsic value, and

11.3.3 Violations

As permitted by State or local law or regulations, the Recipient or its Subrecipients' Code or Standards of Conduct will establish penalties, sanction, or other disciplinary actions for violations that apply to:

- (a) Those individuals listed in section 3.a(1) of the Master Agreement, and
- (b) The Recipient or Subrecipient's Third Party Participants,

- 11.3.4 No employee, officer, board member, or agent of the Owner shall participate in the selection, award, or administration of a contract supported by Federal Transit Administration (FTA) funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award.

11.4 Debarment and Suspension

This contract is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940, 180.935 and 180.945. The contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the Procuring Agency. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Procuring Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Procuring Agency agrees and assures that its third party contractors and lessees will review the "System for Award Management" at <https://www.sam.gov/> before entering into any sub-agreement, lease or third party contract.

The Procuring Agency will be reviewing all third party contractors under the "System for Award Management" at <https://www.sam.gov/> before entering into any contracts.

If the Procuring Agency, recipient, or subrecipient suspends, debars, or takes similar action against a Third Party Participant or individual, the Agency, recipient, or subrecipient will provide immediate written notice to the:

- (a) NCDOT/Public Transportation Division,
- (b) FTA Regional Counsel for the Region in which the Agency is located or implements the Project,
- (c) FTA Project Manager if the Project is administered by FTA Headquarters Office, or
- (d) FTA Chief Counsel.

The requisite "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction" is included as ATTACHMENT B and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

11.5 Bonus or Commission

The Authority affirms that it has not paid, and agrees that it will not pay, any bonus or commission to obtain Federal funding for this Project,

11.6 Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal

contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The requisite "Lobbying Certification" is included as ATTACHMENT C (attach Standard Form-LLL if necessary) and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

11.7 Program Fraud and False or Fraudulent Statements or Related Acts

11.7.1 The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

11.7.2 The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

11.7.3 The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses will not be modified, except to identify the subcontractor who will be subject to the provisions.

11.8 Record Retention and Access to Records and Reports

The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 U.S.C. § 5325(g).

Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S. D. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5303, 5307, 5309, 5310, 5311, 5316, or 5317.

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

The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for five (5) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

11.9 Changes to Federal Requirements and Guidance

Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

FTA's new authorizing legislation, MAP-21 made significant changes to FTA's public transportation programs. FTA has determined that:

- (1) MAP-21 requirements apply to:
 - a. New grants and cooperative agreements for which FTA awarded FY 2013 or a later fiscal year funds appropriated or made available to carry out MAP-21 programs,
 - b. Amendments to existing grants and cooperative agreements for which FTA awarded funds made available or appropriated to carry out MAP-21 programs, and
 - c. All "recoveries" funds FTA awards, irrespective of the fiscal year for which those funds were appropriated,
- (2) Fiscal Year 2012 and previous fiscal year funding requirements apply as follows:
 - a. In some instances, as determined by FTA, previous program requirements apply or will apply to grants and cooperative agreements for which FTA awarded Fiscal Year 2012 or a previous fiscal year funds, but
 - b. In other instances, as determined by FTA, MAP-21 program requirements (including MAP-21 "cross-cutting requirements" identified in section 49 of this Master Agreement) apply or will apply to grants and cooperative agreements for which FTA awarded Fiscal Year 2012 or a previous fiscal year funds.

11.10 Termination or Cancellation of Contract

The Authority, by written notice, may terminate any contract arising from this solicitation, in whole or in part, when it is in the best interest of the project. If this contract is terminated, the authority will be liable only for payment under the payment provisions of this contract or services rendered before the effective date of termination.

The Authority may terminate this contract in whole or in part, for the Authority's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Authority will terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor will

- (1) Immediately discontinue all services affected (unless the notice directs otherwise), and
- (2) Deliver to the Owner all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Owner may make an equitable adjustment in the contract price but will allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Owner may complete the work by issuing another contract or otherwise and the Contractor will be liable for any additional cost incurred by the Owner.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Owner.

11.11 Contracting with Disadvantaged Business Enterprises

11.11.1 This contract is subject to the requirements of U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 [U.S. DOT published final rule, "Disadvantaged Business Enterprise: Program Improvements," 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)], and Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note. The Authority has an FTA approved DBE goal For FY16-FY18 of 4.5% (Race conscious is 2.1% - solicitations targeted to DBEs and race neutral- solicitations open to all vendors with no specified DBE target is 2.4%).

The contractor 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 this DOT-assisted contract. 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 Procuring Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

11.11.2 The Authority currently has an agreement with the NC Department of Transportation authorizing the Department to serve as the Unified Certification Program (UCP) authorizing agency for the Authority. To count toward the DBE goal, all DBE contractors and subcontractors must be certified with NCDOT. NCDOT certified DBE contractors and subcontractors can be found at the following URL: <http://www.ncdot.gov/business/ocs/>

11.11.3 Good faith efforts must be identified if the proposer cannot meet the Authority's adopted DBE goal of 4.5%.

Bidders/offerors are required to document and submit with its original bid sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. No additional DBE information or evidence to meet good faith efforts will be accepted following opening of the bids. Should the DBE participation or good faith efforts to meet DBE participation be inadequate, the bid will be deemed non-responsive and not considered for award. Award of this contract is conditioned on submission of the following concurrent with and accompanying a sealed bid (Attachment F):

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;

4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; or
 6. If the overall goal is not met, evidence of good faith efforts to do so.
- Bidders/Offerors must present the information required above as a matter of responsiveness (see 49 CFR 26.53(3)).
- 11.11.4 The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Procuring Agency. In addition, these may apply:
- the contractor may not hold retainage from its subcontractors; or
 - is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed; or
 - is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by the Procuring Agency and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- 11.11.5 The contractor must promptly notify the Authority whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Authority.
- 11.11.6 DBE reporting is required with each pay application. Failure to report DBE compliance and progress will delay pay application consideration and could affect payment. 8.11.4. The proposer will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. 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 the Authority deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- 11.11.7 The successful bidder/offeror will be required to report its DBE participation obtained. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the contractor's receipt of payment for that work from the Authority. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this contract is satisfactorily completed.
- 11.11.8 The contractor must promptly notify the Authority whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Authority.

11.12 Breaches and Dispute Resolution

If the Contractor does not deliver the required services or the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Owner may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Owner that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Owner, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

The Owner in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the Contractor fails to remedy to Owner's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from Owner setting forth the nature of said breach or default, The Owner shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Owner from also pursuing all available remedies against Contractor and its sureties for said breach or default.

If there is credible evidence that a Third Party Participant (Contractor) has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal funding, notification of FTA is required.

If a legal matter as described above emerges, the Recipient must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or FTA Regional Counsel for the Region in which the Recipient is located and the NCDOT.

11.12.1 Disputes

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties will be decided in writing by the authorized representative of (Recipient)'s Executive Director. This decision will be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director will be binding upon the Contractor and the Contractor will abide by the decision.

11.12.2 Performance During Dispute - Unless otherwise directed by (Recipient), Contractor will continue performance under this Contract while matters in dispute are being resolved.

11.12.3 Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor will be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

11.12.4 Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

11.12.5 Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder will be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Recipient or Contractor will constitute a waiver of any right or duty afforded any of them under the Contract, nor will any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

11.13 Clean Air Act

11.13.1 The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7414 as amended and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

11.13.2 The Contractor also agrees to comply with the applicable requirements of section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued; with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

11.13.3 The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal Assistance provided by FTA.

11.14 Clean Water Act

11.14.1 The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, The Contractor agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

11.14.2 The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11.15 Civil Rights

11.15.1 Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. The third party contractor and all lower tiers will comply with all provisions of FTA Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients", dated October 01, 2012. A copy of the Authority Title VI Policy is available at:

http://www.wavetransit.com/Portals/0/documents/Title_VI_Program.pdf

11.15.2 Equal Employment Opportunity

The following equal employment opportunity requirements apply to the underlying contract:

a. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action will include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws,

regulations, and directives affecting construction undertaken as part of the Project.

11.15.3 Nondiscrimination on the Basis of Age

The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625.

11.15.4 Nondiscrimination on the Basis of Sex

The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

11.15.5 Access for Individuals with Disabilities

The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts will be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- (1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;
- (2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;
- (6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;
- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194;
- (11) Federal regulations, "Miscellaneous Civil Rights Amendments (RRR)," pertaining to nondiscrimination on the basis of disability within 49 C.F.R. Parts 27, 37, and 38 were published in 79 Fed. Reg. 21402, April 16, 2014; and
- (12) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

11.15.6 Access to Services for Persons with Limited English Proficiency

The Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

11.15.7 Environmental Justice

The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note.

11.15.8 Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections

To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 *et seq.*, and any amendments to these laws.

11.15.9 Other Nondiscrimination Statutes

The Contractor agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to this Contract.

11.15.10 The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

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

11.16 Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 *et seq.*

11.17 Protest Procedures

To ensure that protests are received and processed effectively the Authority will provide written bid protest procedures upon request. All protest requests and decisions must be in writing within five (5) days from the Authority announcing the award

The procedure will be as follows:

1. Within five (5) days of announcement of award, a written statement is delivered to the Authority outlining the reason for the protest.
2. The Authority, upon request of the protesting party may review the protest with the protester. Follow-up phone conversations and/or meeting may be requested.
3. The Authority Executive Director informs the Authority Attorney that a formal protest has been received in the form of a written memo along with a copy of the protest letter.
4. The Executive Director, Finance Director and Attorney (Protest Committee) will review the protest and justification for the award.
5. The Protest Committee makes a determination concerning the protest after a complete review of the data and interviews with the protester. The protester is notified, in writing, of the decision of the committee.
6. Should the Protest Committee deny the protest, the protester may file for an appeal by the Authority. The appeal must be in writing and filed with the Executive Committee within ten (10) working days of the denial. Reviews of protests by the Authority will be limited to the Authority's failure to have or follow its protest procedures, or its failure to review a complaint or protest.
8. The protester may appear before Authority and state the reason for the protest.
9. The decision of Authority is final. However the protester may have other remedies such as an appeal to the NCDOT or the FTA, if State and/or Federal funds are included in the purchase. Other legal remedies, such as the court system, are also available to the protester should a protest be denied.

11.17.1 Bid Protest Procedures for Items Purchased With FTA and/or NCDOT Grants

Bids may be protested to FTA only after all administrative remedies on the local level have been exhausted (see above). Only projects that include FTA funding are appealable to the FTA. Prior to the bid opening date, a potential bidder may protest to the FTA the Authority's determination on the vendors request for approved equal, or clarification of the specifications. All protests concerning the bid language or the evaluation procedure must be filed before this date. Such a protest must be in writing and received by the FTA Regional Office prior to the bid opening. A vendor must inform the procuring agency that it is seeking an FTA review. The protest may only deal with a matter previously protested to the Authority. Protests concerning the bid language or the evaluation procedure must be filed prior to the bid opening. Following the bid opening, but prior to bid award, a bidder may only file a protest with the Authority concerning a violation of Federal Law, or failure of the Authority to follow the procedures outlined in these specifications. Such a protest must be in writing and must be received by the Authority not later than five (5) days after the Authority has received bids. Following the answer to the protest by the Authority, the bidder may protest the Authority's decision to FTA. Such a protest must be in writing and received by the FTA Regional Office not later than five (5) federal working days after the Procuring Agency answered the protest. The protest procedure contained in FTA circular 4220.1F will govern FTA's consideration of a protest.

Bids may be protested to NCDOT only after all administrative remedies on the local level have been exhausted (see above). Only projects that include NCDOT funding are appealable to NCDOT. All protest and decisions must be in writing. Reviews of protests by NCDOT will be limited to the Authority's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to

NCDOT must be received by NCDOT within three (3) working days of the date the protester knew or should have known of the violation.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

11.17.2 Purchases Using Federal Transit Funds

The Authority's purchasing procedures for all purchases which are paid for with FTA funds will comply with the latest revision of FTA circular FTA C 4220.1F, Third Party Contracting Requirements (attached), the U. S. DOT purchase requirements (attached), Federal Transit Administration, BEST PRACTICES PROCUREMENT MANUAL, and will include all required contract clauses as indicated in the attached Federal Transit Administration, Required Contract Clauses.

The purchases will comply with the latest revision of these documents and/or any other requirements subsequently passed by the FTA, USDOT or other applicable Federal agencies.

It is the responsibility of the requisitioner to notify Purchasing that federal funds are being used for the purchase or contract.

11.18 National Intelligent Transportation Systems Architecture and Standards

To the extent applicable, the Owner agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued (*applicable to ITS projects*).

11.19 Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms will be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor will not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

11.20 Hold Harmless

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Owner of this Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including all claims, losses, costs and expenses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

The Contractor represents and warrants that it will make no claim of any kind or nature against the Owner or its agents who are involved in the delivery or processing of contractor goods to the Owner. The representation and warranty in the preceding sentence will survive the termination or expiration of this contract.

11.21 Safe Operation of Motor Vehicles

- a. **Seat Belt Use**
Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts, leases or similar documents in connection with this project.
- b. **Distracted Driving, Including Texting While Driving.**
Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in any third party subcontract leases or similar documents in connection with this project.
- c. **Safety.** The Contractor is encouraged to:
 - (1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving Company-owned or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an electronic device.
 - (2) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- d. **Definitions**
 - (1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.
 - (2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

11.22 North Carolina State Ethics Requirement

Pursuant to Governor Perdue's Executive Order # 24, this section should be included in the terms and conditions of all contracts let by the Governor's Cabinet Agencies and the Office of the Governor:

"By Executive Order 24, issued by Governor Perdue, and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and

Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.”

To be added near the signature portion of all contracts let by the Governor’s Cabinet Agencies and the Office of the Governor:

“N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.”

11.23 Notification of Federal Participation

To the extent required by Federal law, the State of North Carolina agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for qualifications, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project that it will identify the FTA grant source by listing the Catalog of Federal Domestic Assistance Number of the program. The following FTA grant programs will be eligible to participate in this bid, 20.505, 20.507, 20.500, 20.513, 20.509, 20.516, 20.519, 20.521, 20.525, and 20.526. Federal funding assistance up to eighty (80%) percent may be provided.

11.24 Environmental Protection (requirements for environmental studies)

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S. C. § 5159, if applicable); Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5323(c)(2)), as amended by MAP-21, ; U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA FTA regulations, “Environmental Impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622; were published in the Federal Register, 78 Fed. Reg. 8963, February 7, 2013; and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Contractor agrees to comply with the applicable provisions of 23 U.S.C. § 139 “Efficient environmental reviews for project decision making”, pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to Purchaser’s responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, “Environmental Review Process (Public Law 109-59),” 71 Fed. Reg. 66576 et seq. November 15, 2006. Joint FHWA and FTA final guidance, “Interim Guidance on MAP-21 Section 1319 Accelerated Decision making in Environmental Reviews,” dated January 14, 2013, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

11.25 Environmental Justice (requirements for environmental studies)

The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; as well as facilitating compliance with that Executive Order; and DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377 et seq., April 15, 1997, except to the extent that the Federal Government determines otherwise in writing; and the most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

11.26 Additional Environmental Requirements (requirements for environmental studies)

The Contractor agrees to comply with the following:

- *Corridor Preservation.* That development of right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, will not occur in anticipation of its Project until all required environmental reviews for that Project have been completed;
- *Use of Certain Public Lands.* Assures that it will comply specifically 49 U.S.C. § 303, which requires certain findings be made before an FTA-funded Project may be carried out that involves the use of any publicly owned land.
- *Wild and Scenic Rivers.* It will comply, with Federal protections for the national wild and scenic rivers system, 16 U.S.C. §§ 1271 - 1287,
- *Coastal Zone Management.* Assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 - 1465,
- *Wetlands.* Agrees to, and assures that it will, facilitate compliance with the protections for wetlands provided in Executive Order 119 No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note,
- *Floodplains.* Agrees to, and assures that it will, facilitate compliance with the flood hazards protections in floodplains provided in Executive Order No. 11988, as amended, "Floodplain Management," 42 U.S.C. § 4321 note,
- *Endangered Species and Fishery Conservation.* Agrees to comply, and assures that it will comply, with the protections for endangered species of The Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 - 1544,
- *Hazardous Waste.* Assures that it will, facilitate compliance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 - 9675, which establishes requirements for the treatment of areas affected by hazardous waste
- *Historic Preservation.* Agrees to, and assures that it will:
 - o Comply with U.S. DOT laws, including 49 U.S.C. § 303, which requires certain findings be made before a Project involving the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places may be undertaken
 - o Encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f,
 - o Facilitate compliance with Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note,
 - o Comply with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. § 469a - 469c,

- o Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. part 800, which requires the Recipient to:
- o Consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and
- o Notify FTA of affected properties, and
- o Comply with Federal requirements and follow Federal guidance to avoid or mitigate adverse effects on those historic properties, except as the Federal Government determines otherwise in writing,
- *Indian Sacred Sites.* Agrees to assure that it will facilitate compliance with
 - o The American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C.

11.27 Fly America

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

11.28 Patents and Rights in Data (CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK - ONLY)

- A. Rights in Data - These following requirements apply to each contract involving experimental, developmental, or research work:
- (1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
 - (2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - (a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the

- release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
- (b) Effective December 19, 2014, the Super circular, 2 C.F.R. part 1201 did not retain the common rule provision with respect to program income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project which are developed under a research project.
 - (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (e), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
 - (d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the -Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition, of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents, of the Federal Government.
 - (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that

- the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work
- (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
 - (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (4) Therefore, when the Project is completed, the Contractor agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Contractor agrees to provide other reports pertaining to the Project that FTA may request. The Contractor agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA.
 - (5) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- B. Patent Rights - These following requirements apply to each contract involving experimental, developmental, or research work:
- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
 - (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

11.29 Privacy

To the extent that the Contractor, or its subcontractors, if any, or any to their respective employees administer any system of records on behalf of the Federal Government, Contractor agrees to comply with, and assure the compliance of its subcontractors, if any, with the

information restrictions and other applicable requirements of the Privacy Act of 1974, as amended, 5 U.S.C. Sect. 552, (the Privacy Act).

The Contractor shall obtain the express consent of the Department and the Federal Government before the Contractor, and any subcontractors, or any of their respective employees operate a system of records on behalf of the Federal Government. Failure to do so may result in termination of the Contract and civil and criminal penalties for violation of the Privacy Act.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

11.30 Architectural, Engineering or Related Services

In accordance with 49 U.S.C. § 5325(b), the Contractor agrees to comply with the following requirements pertaining to the procurement of architectural engineering or related services that will be financed with Federal assistance authorized under 49 U.S.C. chapter 53 or required by Federal law to be administered in accordance with 49 U.S.C. chapter 53:

- (1) When procuring architectural engineering, or related services, the Contractor agrees that it and its subcontractors at any tier will:
 - (a) Negotiate for architectural engineering or related services in the same manner as a contract for architectural engineering, or related services is negotiated under chapter 11 of Title 40, United States Code, or
 - (b) Comply with an equivalent State qualifications-based requirement for contracting for architectural engineering, or related services, provided the State has adopted by law such requirement before August 10, 2005.
- (2) Upon awarding a contract for architectural engineering or related services, the Contractor agrees that it and its subcontractors at any tier will:
 - (a) Perform and audit the third party contract or the third party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31.
 - (b) Accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute.
 - (c) Will use indirect cost rates accepted by a cognizant Federal or State government agency for contract or subcontract for purposes of contract estimation, negotiation, administration, reporting, and contract payment without limitation by administrative or de facto ceilings, and
 - (d) In compliance with 49 U.S.C. § 5325(b)(2)(D), agrees and assures that it and the members of any group of entities sharing cost or rate data described in section 17.r(2)(c) of this Master Agreement shall:
 1. Notify any affected firm before requesting or using that data,
 2. Maintain the confidentiality of that data, and assure that it is not accessible or provided to others, and
 3. Not disclose that data under any circumstances if doing so is prohibited by 49 U.S.C. § 5325(b) or other law.

11.31 Seismic Safety

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 et seq., and the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41, specifically, 49

C.F.R. § 41.117. The contractor also agrees to certify to the extent required by the regulation to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and that the certification of compliance issued on the project and will facilitate and follow Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, except as the Federal Government determines otherwise in writing (applicable to A&E contracts).

11.32 Supervision of Construction

Competent and adequate engineering supervision will be maintained at the construction site of the Project to ensure that the completed work conforms to the approved plans and specifications (applicable to A&E contracts).

11.33 State and Local Disclaimer

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

11.34 Metric System

To the extent required by U.S. DOT or FTA, the Contractor agrees to use the metric system of measurement in its Contract activities as may be required by 49 U.S.C. Sect. 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. Sect. 205a; and other regulations, guidelines and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

11.35 Geographic Information and Related Spatial Data

In accordance with U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, and OMB Circular A-16, Supplemental Guidance "Geospatial Line of Business," November 10, 2010, the Contractor agrees to implement this Project so that any activities involving spatial data and geographic information systems activities financed directly or indirectly, in whole or in part, by Federal assistance, are consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

11.36 Exclusionary or Discriminatory Specifications or Requirements

The Contractor agrees that it will comply with the requirements of 49 U.S.C. Sect. 5325(h) by refraining from using any funds derived from FTA in performance of this Contract to support any sub-contracts using exclusionary or discriminatory specifications or requirements.

11.37 Sensitive Security Information

Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with "The Homeland Security Act", as amended, specifically 49 U.S.C. Section 40119(b), The Aviation and Transportation Security Act, as amended, 49 U.S.C. § 114(r), U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. part 15, and U.S. Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. part 1520.

11.38 NC E-Verify Requirements

To ensure compliance with the E-Verify requirements of the General Statutes of North Carolina, all contractors, including any subcontractors employed by the contractor(s), by submitting a bid, proposal or any other response, or by providing any material,

equipment, supplies, services, etc., attest and affirm that they are aware and in full compliance with Article 2 of Chapter 64, (NCGS64-26(a)) relating to the E-Verify requirements by executing and submitting the E-verify Affidavit included in this Invitation for Bids as Attachment E.

ATTACHMENT A

**LOBBYING CERTIFICATION
CERTIFICATION REGARDING LOBBYING**

The undersigned _____ certifies, to the best of his or her knowledge and belief, that:
(Contractor)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipient shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 for each such expenditure or failure.]

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

Signature of Contractor's Authorized Official

Name and Title of Contractors Authorized Official

corporate seal

_____, 20_____
Date

Notary Public _____

My Appointment Expires _____

Subscribed and sworn to before me this ___ day of _____, 20___, in the State of

_____ and the County of _____

ATTACHMENT B

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY and VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION**

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

ATTACHMENT C

PRICING SCHEDULE

Fixed cost for preparation of Consultant Services Wave Transit Short Range Plan Development - Contract # 23-07, proposer proposes the following price:

Name of Proposer

Signature of Authorized Official

Date

TASK	PRICE
6.1.1	
6.1.2	
6.1.3	
6.1.4	
6.1.5	
6.1.6	
6.1.7	
6.1.8	
6.1.9	
6.1.10	
6.1.11	
6.1.12	
6.1.13	
6.1.14	
TOTAL	

ATTACHMENT D

ACKNOWLEDGEMENT OF ADDENDA

The following form shall be completed and included in the bid. Failure to acknowledge receipt of all addenda may cause the bid to be considered nonresponsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the Offer.

The undersigned acknowledges receipt of the following addenda to the documents:

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Name of Proposer

Address

City, State, Zip

Signature of Authorized Official

Date

ATTACHMENT E

LEGAL STATUS & EVIDENCE OF AUTHORITY

_____ is a _____ and meets the legal requirements
name of firm type of firm

required by the State of North Carolina to conduct business in the state. (If the proposer is a corporation, it must furnish a certificate attesting to its corporate existence).

_____ is hereby authorized by _____ to sign
name of authorized agent name of firm

contracts, documents and other items on behalf of _____ relating to the submitted.
name of firm

Typed or Printed Name of Certifying Official
Chief Executive Officer or President of Firm

Signature of Certifying Official
Chief Executive Officer or President of Firm

Date

corporate seal

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public in and for the State and County aforesaid, certify that

_____ personally came before me this day and acknowledged that he/she is
name of certifying official

_____ of _____, and that by Authority duly given the foregoing
title of certifying official name of company

instrument was signed in its name by sealed with its corporate seal and attested by him/herself as its

Title of certifying official

Witness my hand and official seal, this the ____ day of _____, 20 ____.

Notary Public

My Commission Expires: _____

ATTACHMENT F

North Carolina E-Verify Status

STATE OF NORTH CAROLINA

COUNTY OF _____

AFFIDAVIT OF COMPLIANCE WITH N.C. E-VERIFY STATUTES

(To be submitted with all bids)

I, _____ (hereinafter the "Affiant"), duly authorized by and on behalf of _____ (hereinafter the "Employer") after being first duly sworn deposes and says as follows:

1. I am the _____ (President, Manager, CEO, etc.) of the Employer and possess the full authority to speak for and on behalf of the Employer identified above.
2. Employer understands that "E-Verify" means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
3. Employer employs 25 or more employees, and is in compliance with the provisions of N.C. General Statute §64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification for a period of at least one year. Employer employs fewer than 25 Employees and is therefore not subject to the provisions of N.C. General Statute §64-26.
4. All subcontractors engaged by or to be engaged by Employer have or will have likewise complied with the provisions of N.C. General Statute §64-26.
5. Employer shall keep the State of North Carolina informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina Statutes.

This ____ day of _____, 20 ____.

Signature of Affiant

Printed Name and Title

State of

County of

Subscribed and sworn to before me this ____ day of _____, 20 ____.

Notary


Public

(SEAL)

My Appointment Expires

ATTACHMENT G

Disadvantaged Business Enterprise Submittal

 LISTING OF DBE SUBCONTRACTORS AND COMMITMENT ITEMS				
FIRM NAME AND ADDRESS	ITEM NO.	ITEM DESCRIPTION	AGREED UPON UNIT PRICE (*)	DOLLAR VOLUME OF SUBLET ITEM
CONTRACT NO.23-07 AGENCY <u>Cape Fear Public Transportation Authority</u> CONTRACTOR _____				
(*) The Dollar Volume shown in his column shall be the actual price agreed upon by the Prime Contractor and the DBE subcontractor, and these prices will be used to determine percentage of total contract bid price.	Dollar Value of DBE Subcontractor MUST HAVE ENTRY EVEN IF FIGURE TO BE ENTERED IS ZERO		\$	
	Percentage of Total Contract Bid Price			%

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

AUTHORITY CONTRACT: 23-07

NAME OF BIDDER: _____

The undersigned intends to perform work in connection with the above contract upon execution of the bid and subsequent award of contract by the Cape Fear Public Transportation Authority:

Name of MBE/WBE/DBE Subcontractor _____

Address _____

City _____ **State** _____ **Zip** _____

Please check all that apply:

Minority Business Enterprise (MBE) _____

Women Business Enterprise (WBE) _____

Disadvantaged Business Enterprise (DBE) _____

The MBE /WBE /DBE status of the above named subcontractor is certified by the North Carolina Department of Transportation. The above named subcontractor is prepared to perform the described work listed on the attached MBE/WBE/DBE Commitment Items sheet, in connection with the above contract upon execution of the bid and subsequent award of contract by the Board of Transportation. The above named subcontractor is prepared to perform the described work at the estimated Commitment Total for Subcontractor Price identified on the MBE/WBE/DBE Commitment Items sheet and amount indicated below.

Commitment Total based on estimated Unit Prices and Quantities on the "attached" MBE/WBE/DBE Commitment Items sheet. Amount \$ _____

The above named bidder and subcontractor mutually accepts the Commitment Total estimated for the Unit Prices and Quantities. This commitment total is based on estimated quantities only and most likely will vary up or down as the project is completed. Final compensation will be based on actual quantities of work performed and accepted during the pursuance of work. The above listed amount represents the entire dollar amount quoted based on these estimated quantities. No conversations, verbal agreements, and/or other forms of non-written representations shall serve to add, delete, or modify the terms as stated.

This document shall not serve in any manner as an actual subcontract between the two parties. A separate subcontractor agreement will describe in detail the contractual obligations of the bidder and the MBE/WBE/DBE subcontractor.

Affirmation

The above named MBE/ WBE/ DBE subcontractor affirms that it will perform the portion(s) of the contract for the estimated dollar value as stated above.

Name of MBE/ WBE/ DBE Subcontractor

Name of Bidder

Signature / Title

Signature / Title

Date

Date

DBE GOOD FAITH EFFORT DOCUMENTATION

The intent of this form is to document the good faith effort attempts made by bidders and proposers in soliciting DBE firms to meet the DBE project goal. Please note that the project goal will not be waived and the contractor must make efforts to achieve the goal throughout the life of the contract.

IMPORTANT - THIS FORM MUST BE COMPLETED AND SUBMITTED WITH SEALED BID OR PROPOSAL ONLY IF BIDDER/PROPOSER CAN NOT MEET THE ESTABLISHED DBE GOAL FOR THE PROJECT. ONLY FIRMS CERTIFIED BY THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION ARE CONSIDERED ELIGIBLE DBE FIRMS. THIS FORM MUST CONTAIN ADEQUATE INFORMATION TO VERIFY THAT THE BIDDER/PROPOSER MADE THE REQUIRED GOOD FAITH EFFORT TO RECRUIT MINORITY BUSINESSES. NO ADDITIONAL DBE GOOD FAITH EFFORT INFORMATION WILL BE ACCEPTED FOLLOWING THE OPENING OF BIDS. NCDOT CERTIFIED FIRMS CAN BE FOUND AT THE FOLLOWING URL: <https://www.ebs.nc.gov/VendorDirectory/default.html>

Date Submitted: _____ Wave Project Number: _____

Contractor Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Person: _____ Telephone Number: _____

Email Address: _____

I certify that the information contained in this good faith effort documentation form is true and correct to the best of my knowledge. I further understand that any willful falsification, fraudulent statement or misrepresentation will result in appropriate sanctions which may involve debarment and/or prosecution under applicable State and Federal laws.

Bidder/Authorized Representative Signature

Title

Date

Work Type Number	Description of Work, Service or Material	DBE Firm Name		
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount
1.				
2.				
3.				
Comments:				
Work Type Number	Description of Work, Service or Material	DBE Firm Name		
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount
1.				
2.				
3.				
Comments:				
Work Type Number	Description of Work, Service or Material	DBE Firm Name		
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount
1.				
2.				
3.				
Comments:				

EXAMPLES OF GOOD FAITH EFFORT DOCUMENTATION

The following is a list of types of actions a bidder should take when documenting good faith efforts. This list is not intended to be exclusive or exhaustive, nor are all the actions mandatory. Other factors or types of efforts may be relevant in appropriate cases.

SOLICITATION /ADVERTISEMENT EFFORTS - should include your efforts to solicit quotes, through all reasonable and available means, the interest of all certified firms who have the capability to perform the work of the contract. The bidder should ensure that the requests are made within sufficient time to allow DBE firms to respond. The contractor should take the initiative to contact firms which have indicated an interest in participating as a subcontractor/supplier.

NEGOTIATION EFFORTS - should include your efforts to make a portion of the project work available consistent with the availability and capabilities of DBE firms in order to facilitate DBE participation. Bidders/proposers are encouraged to break out contract work items into smaller economically feasible subcontracts to ensure DBE participation. As a part of negotiation bidders/proposers should make plans/specifications available to DBE firms which have shown an interest in participating. When negotiating with DBE firms a contractor should use good business judgment by considering price and capability, as well as project goals. A contractor is not expected to accept a price that is not reasonable and is excessive. Comparison figures should accompany the good faith effort submittal which supports the price differential.

ASSISTANCE EFFORTS - should include efforts to assist DBE firms in obtaining bonding, lines of credit, insurance, equipment, materials, supplies or other project related assistance. Bidders/proposers are encouraged to assist firms with independently securing/obtaining these resources. The level of assistance should be limited to referral sources, introductions, and making initial contacts with industry representatives on the DBE firm's behalf.

ADDITIONAL EFFORTS - could include any additional efforts to utilize the services of minority/women organizations, groups; local, state and federal business offices which provides assistance in the recruitment and placement of DBE firms. Utilizing the services offered by NCDOT DBE support services for assistance with advertisement and recruitment efforts. Contractors are encouraged to undertake and document any other efforts taken in their attempt to fulfill the project goal.

ATTACHMENT H

PROPOSAL SUBMISSION FORM

This Proposal is submitted by:

Company Legal Name: _____

Representative Name: _____

Representative Signature: _____

Representative Title: _____

Address: _____

City/State/Zip: _____

Email Address: _____

Phone Number: _____

Website Address: _____