

REQUEST FOR PROPOSALS

ROOF REPLACEMENT

**TRANSIT AUTHORITY OF CENTRAL KENTUCKY
(T.A.C.K.)**

**1209 N. DIXIE HIGHWAY
ELIZABETHTOWN, KY 42701**

ARCHITECT

**KEYES ARCHITECTS & ASSOCIATES, PLLC
3005 TAYLOR BLVD.
LOUISVILLE, KY 40208
rfi@keyesarchitects.com
502-636-5113**

OWNER

**TRANSIT AUTHORITY OF CENTRAL KENTUCKY
1209 N. DIXIE HWY.
ELIZABETHTOWN, KY 42701**

August 28, 2019

EXECUTIVE SUMMARY

Date Issued:	August 28, 2019
Description of Work:	TACK is seeking proposals from qualified firms to remove and replace existing roof
Bid Packages:	Zen Reprographics (502) 587-1951 zenrepro.com Duplicator Sales& Service (270) 765-2553 fasttrackcopies.net Also available in plan rooms and can be viewed at Keyes Architects 3005 Taylor Blvd., Louisville,
Contract Type:	Firm Fixed Price
Contract Term:	The contract will begin upon award and end upon completion of the project.
Basis for Award:	Award will be made to the firm whose proposal, in TACK's sole judgment, is considered to be most advantageous to TACK, cost and all other factors considered.
Disadvantaged Business Enterprise Goal:	None
Site Visit/Walkthrough Date:	September 10, 2019 at 3:00PM. Participation in the site visit/walkthrough is mandatory to bid.
Location:	TACK Operating Facility 1209 N. Dixie Highway, Elizabethtown, KY 42701
Last Day for Questions:	September 16, 2019 4:00 PM EST. Questions should be sent via email: rfi@keyesarchitects.com Subject Line: TACK Roof
Funding Source:	Federal Funds
Taxes:	TACK is exempt from payment of Kentucky sales tax and Federal excise taxes.
Point of Contact:	Charles Keyes, III Architect Phone: 502-636-5113 Email: rfi@keyesarchitects.com Subject Line: TACK Roof Replacement
Prevailing Wage:	Federal prevailing wages apply to this project and can be obtained <u>within or visit https://beta.sam.gov</u> (Include the prevailing wages within the Pricing Form)
Bonds Required:	Bid Bond and 100% Labor & Materials Bond
Exhibits:	A – Drawings, Specifications & Bid Form B – Wage Determination C - Attachments: C-1, C-2, C-3, C-4, C-5, C-6, C-7 D – General Provisions Required Federal Clauses E – Special Revisions for Construction Projects F – EPDM and Foam/Coatings Pre-Bid Information

NO PROPOSAL REPLY FORM

**TRANSIT AUTHORITY OF CENTRAL KENTUCKY
ROOF REPLACEMENT**

To assist TACK obtaining good competition on its Requests for Proposals, we ask that if you were made aware of this project invitation but do not wish to propose, please state the reason(s) below and return this form to Charles Keyes rfi@keyesarchitects.com or mail to TACK 1209 N. Dixie Highway, Elizabethtown, Kentucky 42701 – Attn: Jodi Alford.

This information will not preclude receipt of future invitations unless you request removal from the Proposer’s List by so indicating below.

Unfortunately, we must offer a “No Proposal” at this time because:

___ 1. We do not wish to participate in the proposal process.

___ 2. We do not wish to propose under the terms and conditions of the Request for Proposal document.
Our objections are:

___ 3. We do not feel we can be competitive.

___ 4. We do not provide the services on which Proposals are requested.

___ 5. Other: _____

___ We wish to remain on the Proposer’s list for these services.

___ We wish to be removed from the Proposer’s list for these services.

FIRM NAME

SIGNATURE

**ATTACHMENT C-1
COMPANY INFORMATION SHEET**

49 CFR, Part 26 requires that all recipients of federal funds collect certain information from all proposers and Proposers submitting responses to solicitations. Please fill out this form completely. Any offer that does not contain a completed copy of this form will be ruled as non-responsive and dropped from further consideration in the procurement process for this solicitation.

COMPANY: _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

CONTACT NAME: _____

TELEPHONE: _____ **FAX:** _____

EMAIL ADDRESS: _____

General Classification of Firm by Number of Employees:

Less Than 10 11 – 50 51 – 100 101 – 500
 501 – 1000 1001 – 5000 More Than 5000

General Classification of Firm in Age of Existence:

0 – 5 Years 6 – 10 Years 11 – 50 Years Over 50 Years

General Classification of Firm by Annual Gross Income:

Less than \$100,000 \$100,000 - \$ 250,000 \$250,001 - \$500,000
 \$500,001 - \$1,000,000 \$1,000,001 - \$5,000,000 Over \$5,000,000

General Classification of Firm by Type:

Firm is a certified DBE Firm is a certified MBE
 Firm is a certified WBE Firm is not certified as any of the previous types

I certify this information is accurate to the best of my knowledge.

SIGNATURE: _____ **DATE:** _____

ATTACHMENT C-2
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS

This Certification is required to be submitted to TACK on behalf of the principal bidder/proposer and all subcontractors whose subcontracts are reasonably anticipated to exceed \$25,000 in value.

- A. The undersigned Bidder/Proposer/Subcontractor (Attester) certifies to the best of its knowledge and belief that the Attester and/or any of its principals or subcontractors:
1. Are not presently included in the Excluded Parties List System maintained by the U.S. General Services Administration or otherwise debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State of Ohio department or agency;
 2. Have not, within a three (3) year period preceding this bid/proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract or subcontract; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph 2 above; and
 4. Have not, within a three (3) year period preceding this bid/proposal, had one or more public transactions (Federal, State or local) terminated for cause or default by any federal agency.

"Principals", for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter which may be within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code.

- B. The Attester shall provide immediate written notice to TACK's Procurement Department if, at any time the Attester learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- C. A certification that any of the items in Paragraph A exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Attester's responsibility. Failure of the Attester to furnish a certification or provide such additional information as requested by TACK may render the Attester nonresponsible.
- D. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by Paragraph A. The knowledge and information of an Attester is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- E. The certification in Paragraph A is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Attester knowingly rendered an erroneous certification, in addition to other remedies available to TACK, TACK may terminate the contract resulting from this solicitation for default.

If the Attester is unable to certify to any of the statements in this certification, it shall attach an explanation to this certification.

THE UNDERSIGNED CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ., ARE APPLICABLE THERETO.

Executed this _____ day of _____, 20_____.

Name of Bidder/Proposer: _____

Address: _____

City, State, Zip: _____

Signature of Authorized Official: _____

Printed Name of Official: _____

Title of Official: _____

**ATTACHMENT C-3
CERTIFICATION OF RESTRICTIONS ON LOBBYING**

THE UNDERSIGNED HEREBY CERTIFIES ON BEHALF OF

_____ that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (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 sub-recipients 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 transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this ____ day of _____, 20

Name of Proposer: _____

Address: _____

City, State, Zip: _____

Signature of Authorized Official: _____

Title of Official: _____

Telephone _____ Date: _____

**ATTACHMENT C-4
NON-COLLUSION AFFIDAVIT**

NOTE: Each proposer shall furnish this affidavit, properly executed and containing all required information, with his/her proposal. **IF YOU FAIL TO COMPLY, YOUR PROPOSAL WILL NOT BE CONSIDERED.**

Commonwealth Of Kentucky

County of _____

_____ SS: _____ being first duly sworn deposes and says:

Individual only: That he is an individual doing business under the name of _____ at _____
_____ in the City of _____
State of _____.

Partnership only: That he is duly authorized representative of a partnership doing business under the name of _____ in the City of _____
State of _____.

Corporation only: That he is duly authorized, qualified and acting _____ of _____, a corporation organized and existing under the laws of the State of _____, and that said partnership or said corporation is filling herewith a proposal to the TRANSIT AUTHORITY OF CENTRAL KENTUCKY in conformity with the foregoing Scope of Work:

Individual only: Affiant further says that the following is a complete and accurate list of the names and addresses of all persons interested in said proposed contract: Affiant further says that he is represented by the following attorney (s): _____ and is also represented by the following resident agents: _____

Partnership only: Affiant further says that the following is a complete and accurate list of the names and addresses of the members of said partnership: _____ Affiant further says that said partnership is represented by the following attorney(s): _____ and is also represented by the following resident agents: _____

Corporation only: Affiant further says that the following is a complete and accurate list of the officers, directors and attorneys of said corporations:

President: _____

Directors: _____

Vice President: _____

Secretary: _____

Treasurer: _____

Local Manager of Statutory Agent: _____

Attorneys: _____

And that the following officers are duly authorized to execute contracts on behalf of said corporation: _____

Affiant further says that the proposal filed herewith is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such proposal is genuine and not collusion or sham; that said proposer has not, directly or indirectly, induced or solicited any other proposer to put in a false or sham proposal, and has not directly or indirectly colluded conspired, connived or agreed with any proposer or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that said proper has not in any manner, directly or indirectly, sought by agreement, communication or conference with other proposer , or to fix any overhead, profit, or cost element of such proposal price or that any other proposer or to secure any advantage against the procuring transit agency, or anyone interested in the proposed contract; that all statements contained in such proposal are true; that said proposer has not directly, or indirectly , submitted his price or any break-down thereof or the contents thereof, or divulged information or data relative thereto, or paid or agreed to pay, directly or indirectly, any money or other valuable consideration , assistance or aid rendered or to be rendered in procuring or attempting to procure the contract above referred to, to any corporation, partnership, company, association, organization, or to any member or agent thereof, or to any other individual, except such persons as herein above disclosed to have a partnership or other financial interest with said proposer will not pay or agree to pay, directly or indirectly, any money or other valuable consideration to any corporation, partnership, company association, organization or to assistance in securing contract above referred to in the event the same is awarded to:

Further affiant saith not.

(Sign Here)

Sworn to before me and subscribed in the presence this ____ day
of _____, 20__.

Notary Public: _____

My Commission Expires: _____, 20__

ATTACHMENT C-5
CERTIFICATE OF PROCUREMENT INTEGRITY

I, _____ am the officer or employee responsible
(Name of Certifier)

for the preparation of this proposal and hereby certify that, for the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of Subsection 27(a), (b), (c), or (e) of the office of Federal Procurement Policy Act* (41 U.S.C. 423) (hereinafter referred to as "the Act"), as implemented in the Federal Acquisition Regulations (FAR), occurring during the conduct of this procurement. As required by Subsection 27(d)(1)(B) of the Act, I further certify that each officer, employee, agent, representative, and consultant of _____ (name of proposer) who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of Subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning any violation or possible violation of the Act, as implemented in the FAR, pertaining to this procurement.

Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet). ENTER "NONE" IF NONE EXISTS)

Signature of the Officer or Employee
Responsible for the Offer

Date _____

Typed Name of the Officer or Employee for
the Offer

* Section 27 became effective on September 16, 1989.
THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKE SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE SECTION 1001.

ATTACHMENT C-6
ADDENDA ACKNOWLEDGEMENT FORM

Addenda Received (if none received check here) _____ None Received

Addendum No. _____ Date Received:

Addendum No. _____ Date Received:

Addendum No. _____ Date Received:

Addendum No. _____ Date Received:

Addendum No. _____ Date Received:

Addendum No. _____ Date Received:

Name of Individual, partner or corporation: _____

Street Address: _____

City, State and Zip Code: _____

Telephone Number: _____

Printed Name: _____

Authorized Signature: _____

Title: _____

ATTACHMENT C-7
CERTIFICATION REGARDING BUY AMERICA

The following certification is required for the procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or Offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

GENERAL PROVISIONS REQUIRED FEDERAL CLAUSES

The Transit Authority of Central Kentucky (TACK) is a recipient of federal funds and is mandated to follow specific guidelines in the procurement of goods and services. The following clauses shall be incorporated by reference into any contract that results from this solicitation. Not all required clauses may pertain to this solicitation.

Definitions used herein:

- The terms “respondent, Proposer, proposer, and contractor” mean the offeror or vendor.
- The terms “the Authority”, “procuring transit agency” and “recipient” (as in recipient of FTA funds) mean the Transit Authority of Central Kentucky (TACK).
- The term “USDOT” means the United States Department of Transportation.
- The term “FTA” means the Federal Transportation Administration.

1. Fly America Requirements

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.

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

2. Buy America Requirements

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and

include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 65 percent domestic content.

A Proposer or offeror must submit to TACK the appropriate Buy America certification with all proposals or offers on FTA-funded contracts, except those subject to a general waiver. Proposals or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

The Buy America requirements flow down from the Authority to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$150,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

3. Cargo Preference Requirements

Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Authority (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

4. Energy Conservation Requirements

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

The Energy Conservation requirements are applicable to all contracts.

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

5. Clean Water Requirements

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . 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.

(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.

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

6. Bus Testing

The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

7. Pre-Award and Post Delivery Audits Requirement

The Contractor agrees to comply with 49 U.S.C. § 5323(1) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Proposer/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the proposal specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

8. Lobbying

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or proposal 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 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 TACK.

The Lobbying requirements apply to contracts of \$100,000 or more.

9. Access to Records and Reports

The following access to records requirements apply to this Contract:

1. Since TACK is a local government and is an FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide TACK, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. 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.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. 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.
3. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the 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. Reference 49 CFR 18.39(i)(11).
4. FTA does not require the inclusion of these requirements in subcontracts.

10. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between TACK 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.

11. Clean Air

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to TACK and understands and agrees that TACK will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(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.

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year. The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

12. Contract Work Hours and Safety Standards Act

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

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** – TACK shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

This clause applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items”. In all cases this clause only applies to contracts over \$100,000.

13. No Government Obligation to Third Parties

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

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

14. Program Fraud and False or Fraudulent Statements and Related Acts

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

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

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

15. Termination

a. Termination for Convenience (General Provision) TACK may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government’s best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to TACK to be paid the Contractor. If the Contractor has any property in its possession belonging to TACK, the Contractor will account for the same, and dispose of it in the manner TACK directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for

services, 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, TACK 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 TACK 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, TACK, 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.

c. Opportunity to Cure (General Provision) TACK 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 Contractor fails to remedy to TACK'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 TACK setting forth the nature of said breach or default, TACK 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 TACK from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that TACK elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by TACK shall not limit TACK's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) TACK, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, TACK may terminate this contract for default. TACK shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in

this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, TACK may terminate this contract for default. TACK shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of TACK goods, the Contractor shall, upon direction of TACK, protect and preserve the goods until surrendered to TACK or its agent. The Contractor and TACK shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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 shall be the same as if the termination had been issued for the convenience of TACK.

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, TACK may terminate this contract for default. TACK shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, TACK may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to TACK resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by TACK in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of TACK, acts of another Contractor in the performance of a contract with TACK, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies TACK in writing of the causes of delay. If in the judgment of TACK, the delay is excusable, the time for completing the work shall be extended. The judgment of TACK shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of TACK.

i. Termination for Convenience or Default (Architect and Engineering) TACK may terminate this contract in whole or in part, for TACK's convenience or because of the failure of the Contractor to fulfill the contract obligations. TACK shall 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 shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer 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 TACK, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

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

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 shall be the same as if the termination had been issued for the convenience of TACK.

j. Termination for Convenience of Default (Cost-Type Contracts) TACK may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of TACK or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from TACK, or property supplied to the Contractor by TACK. If the termination is for default, TACK may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to TACK and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of TACK, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, TACK determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, TACK, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

16. Government-Wide Debarment and Suspension (Nonprocurement)

This contract is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)”, 2 C.F.R. Part 180. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR 1200, or affiliates, as defined at 2 CFR 1200, are excluded or disqualified as defined at 2 CFR 1200.

The contractor is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200 in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the Proposer or proposer certifies as follows:

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

This clause applies to all contracts over \$25,000.

17. Privacy Act

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

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

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

18. Civil Rights Requirements

The following requirements apply to the underlying contract:

(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. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, 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 shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act”, 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

Within Fayette County the Fairness Ordinance (no. 201-99) applies. This ordinance adds sexual orientation/gender identity as a protected class against discrimination in housing, employment and public accommodations.

In addition, the Contractor agrees to comply with any implementing requirements or applicable regulations the local government may issue.

19. Breaches and Dispute Resolution

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of TACK’s General Manager. This decision shall 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 General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard

and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by TACK, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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 shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between TACK 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 Kentucky.

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

This clause applies to all contracts in excess of \$100,000.

20. Disadvantaged Business Enterprise (DBE)

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is **1.68%**. Please refer to the scope of work section of this RFP for information on the specific DBE goal for this procurement, if any.

b. 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 TACK deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. ***{If a separate contract goal has been established, use the following}*** Proposers/offers are required to document 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. Award of this contract is conditioned on submission of the following concurrent with and accompanying an initial proposal:

1. The names and addresses of DBE firms that will participate in this contract. The subcontractors/suppliers must be eligible DBEs, i.e. they are currently certified as a DBE in Kentucky or can be certified prior to award;
2. A description of the work each DBE will perform with an indication of the percentage of work to be done by the DBE's own work forces, as compared with that which will be subcontracted by the DBE to other DBEs or non-DBEs;
3. The dollar amount of the participation of each DBE firm participating, including the dollar values of subcontracts to be awarded by the DBE subcontractor;
4. Written documentation of the Proposer/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; and
6. If the contract goal is not met, evidence of good faith efforts to do so (see 28.1 below).

Proposers must present the information required above as a matter of responsiveness with initial proposals prior to contract award (see 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful Proposer/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. 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 TACK. In addition, is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by TACK and contractor's receipt of the partial retainage payment related to the subcontractor's work.

e. The contractor must promptly notify TACK, 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 TACK.

20.1 Good Faith Efforts

In order to be responsive, a Proposer must make good faith efforts to meet the DBE participation goal set forth in the contract. The Proposer must document the good faith efforts it made in that regard. Thus, the Proposal submitted to the Authority must be accompanied by written documentation prepared by the Proposer evidencing all of its sufficient and reasonable good faith efforts toward fulfilling the goal. These efforts must be active steps, and ones, which could reasonably be expected to lead to sufficient DBE participation to meet the contract DBE participation goal. Mere pro forma efforts are not acceptable and will be rejected by the DBE

Officer.

Good Faith Efforts require that the Proposer consider all qualified DBEs, who express an interest in performing work under the contract. This means that the Proposer cannot reject a DBE as unqualified unless the Proposer has sound reasons based on a thorough investigation of the DBE's capabilities. Further, the DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliation (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the Contractor's efforts to meet the contract DBE participation goal.

The following list, which is not exclusive or exhaustive, sets forth the types of actions, which indicate good faith efforts on the part of a Proposer to meet the DBE goal. The extent and type of actions required will vary depending on such things as industry practice; the time available for submitting a proposal and the type of contract involved.

- A. Attendance at a pre-proposal meeting, if any, scheduled by the Authority to inform DBEs of subcontracting opportunities under a given solicitation.
- B. Advertisement in general circulation media, trade association publications, and minority-focus media for at least twenty (20) days before proposals are due. If 20 days are not available, publication for a shorter reasonable time is acceptable.
- C. Written notification to capable DBEs that their interest in the contract is solicited.
- D. Documentation of efforts to negotiate with DBEs for specific sub-contracts including at a minimum:
 1. The names, addresses, and telephone numbers of DBEs that were contacted and the date(s) of contact.
 2. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.
 3. A statement explaining why additional agreements with DBEs were not reached.
- E. For each DBE the Proposer contacted but rejected as unqualified, the reason for the Proposer's conclusion.
- F. Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the Proposer or the Authority.
- G. Documentation of efforts to utilize the services of small business organizations, community and contractor groups to locate qualified DBEs.
- H. Documentation that the Proposer has broken out contract work items into economically feasible units in fields where there are available DBE firms to perform the work.
- I. Evidence that adequate information was provided to interested DBEs about the plans, specifications and requirements of the contract, and that such information was communicated in a timely manner.
- J. Documentation of any efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

20.2 Good Faith Efforts Reconsideration

If it is determined that the apparent successful low Proposers have failed to meet the

requirements of the contract goal/good faith efforts, the Authority will provide them with ONE opportunity for administrative reconsideration, before the Authority awards the contract. This reconsideration will include the following:

- A. The Proposer will be permitted to either provide written evidence or to present oral argument at a pre-scheduled time that the documentation it submitted with its proposal met the DBE goal and/or showed good faith efforts to do so. No new evidence of good faith efforts may be presented after the proposal submission deadline.
- B. The Authority's Reconsideration Officer will review the evidence presented by the Proposer and issue a written determination that the Proposer has: 1) met the DBE goal; 2) not met the DBE goal but has made adequate good faith efforts to do so; or 3) has not met the DBE goal and the good faith efforts made were not adequate.
- C. The decision of the Authority's Reconsideration Officer is final and may not be appealed to the Authority, its funding agencies or the USDOT.
- D. The Authority will not award a contract to any Proposer who does not meet the contract DBE participation goal or show good faith efforts to meet that goal. Thus, it is essential that all Proposers submit ALL relevant documentation concerning the DBE goal and/or good faith efforts in the envelope or package containing their sealed proposal.

20.3 Counting DBE Participation Toward the Contract Goal

The inclusion of any DBE by the Proposer in its proposal documents shall not conclusively establish the Proposer's eligibility for full DBE credit for the firm's participation in the contract. The amount of DBE participation credit shall be based upon an analysis by TACK of the specific duties which will be performed by the DBE.

The Proposer may count toward its DBE goal only expenditures to firms which are currently certified by the KY UCP and which perform a commercially useful function. A firm is considered to perform a commercially useful function when it is responsible for the performance of a distinct element of the work and carries out its responsibilities by actually performing, managing and supervising the work involved.

To determine whether a firm is performing a commercially useful function, the DBE Officer will evaluate the amount of work subcontracted, industry practices and other relevant factors. The DBE Officer reserves the right to deny or limit DBE credit to the Proposer where any DBE is found to be engaged in substantial pass-through activities with others.

DBE participation shall be counted toward the DBE goal in the contract as follows:

- A. Once a DBE is determined to be eligible in accordance with these rules, the total dollar value of the contract awarded to the DBE may be counted toward the DBE goal except as indicated below.
- B. A Proposer may count toward its DBE goal that portion of the total dollar value of a contract with an eligible joint venture equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces.
- C. Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE subcontracts more than thirty percent (30%) or a significantly greater portion of the work

of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. Evidence may be presented by the Proposer involved to rebut this presumption.

- D. When a DBE subcontracts a part of the work under the contract to another firm, the value of the subcontracted work may only be counted towards the DBE goal if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.
- E. The Proposer may count one-hundred percent (100%) of its expenditures for materials and supplies required under the contract and which are obtained from a DBE manufacturer towards the DBE goal. The Proposer may count sixty percent (60%) of its expenditures for material and supplies under the contract obtained from a DBE regular dealer towards its DBE goal. The terms "manufacturer" and "regular dealer" are defined in 49 C.F.R. Part 26.55(e)(1)(ii) and (2)(ii).
- F. The Proposer may count towards its DBE goal expenditures to DBEs which are not manufacturers or regular dealers, such as fees or commissions charged for services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies and transportation charges as set forth in 49 C.F.R. Part 26. However, the DBE Officer must determine the fee or charge to be reasonable and not excessive as compared with fees or charges customarily allowed for similar services.
- G. The Proposer must use good business judgment when negotiating with subcontractors and take a DBE's price and capabilities into consideration. The fact that there may be some additional costs involved in finding and using DBE firms is not sufficient reason to fail to meet the DBE goal set forth in the contract, as long as such costs are reasonable.

20.4 Remedies

Failure to comply with the terms of this DBE clause is considered to be a breach of contract. If the contractor fails or refuses to comply in the time specified, TACK will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, TACK may issue a termination for default proceeding.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

20.5 DBE Program Definitions

A disadvantaged business enterprise is a business:

- A. Which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- B. Whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it. OR

- C. Which is at least 51% owned by one or more women individuals, or in the case of any publicly-owned business, at least 51% of the stock of which is owned by one or more women individuals; and
- D. Whose management and daily business operations are controlled by one or more women individuals who own it.

“Small business concern” means a small business as defined by section 3 of the Small Business Act and Appendix B – Section 106(c) Determination of Business Size.

“Socially and economically disadvantaged individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, or any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

- A. “Black Americans” includes persons having origins in any of the Black racial groups of Africa.
- B. “Hispanic Americans” includes persons of Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish or Portuguese culture or origin, regardless of race.
- C. “Native Americans” includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
- D. “Asian Americans” includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, U.S. Trust Territories of the Pacific, and the Northern Marianas.
- E. “Asian-Indian Americans” includes persons whose origins are from India, Pakistan, and Bangladesh.
- F. “Women”, regardless of race, ethnicity, or origin.
- G. “Other” individuals found to be socially and economically disadvantaged by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

21. 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 4220.1E](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TACK requests which would cause TACK to be in violation of the FTA terms and conditions.

22. Non-Discrimination

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or other such remedy as the recipient deems appropriate.

23. Transit Vehicle Manufacturer Compliance with DBE Requirements

Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 CFR Section 26.49 requires the TVM to submit a certification that it has complied with FTA's DBE requirements. The TVM shall certify in writing that it has complied with the requirements of 49 CFR Section 26.49.

24. Access for Individuals with Disabilities

TACK and contractors are required 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 shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. TACK and contractors are also required to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; 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; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, TACK and contractors agree to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (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. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, “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,” 47 C.F.R. Part 64, Subpart F;

(9) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194;

(10) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

25. Payment of Subcontractors

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from TACK. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of TACK. This clause applies to both DBE and non-DBE subcontracts.

The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.

TACK will not pay the Contractor for work performed unless and until the Contractor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the filing with TACK of lien waivers, canceled checks (if requested), and the Contractor’s sworn statement that it has complied with the prompt payment requirements. Prime Contractors must submit a prompt payment affidavit, (form to be provided by TACK and reproduced below) which identifies each subcontractor (both DBE and non-DBE) and the date and amount of the last payment to such subcontractor, with every payment request filed with TACK, except for the first payment request, on every contract with TACK.

Failure to comply with these prompt payment requirements is a material breach of the Contract, which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment.

Reporting Requirements During the Term of the Contract

The Proposer shall within thirty (30) business days of contract award, or prior to any work being performed, execute formal subcontracts or purchase orders with the DBE firms included in the

proposal. These written agreements shall be made available to TACK upon request. All contracts between the Proposer and its subcontractors must contain a prompt payment clause as set forth in this section above.

During the term of annual contracts, the Proposer shall submit regular “Status Reports of DBE Subcontract Payments” in a form acceptable to the Authority. The frequency with which these reports are to be submitted will be determined by TACK, but in no event will reports be required less frequently than quarterly. In the absence of written notice from TACK, the Proposer’s first “Status Report of DBE Subcontract Payments” will be due ninety (90) days after the date of contract award, with additional reports due quarterly thereafter.

In the case of a one-time procurement with either a single or multiple deliveries, a “Status Report of DBE Subcontract Payments”, in a form acceptable to the Authority, indicating final DBE payments shall be submitted directly to TACK. The information must be submitted prior to or at the same time as the Proposer’s final invoice to the Authority. Failure to follow these directions may delay final payment.

PROMPT PAYMENT AFFIDAVIT

Contractor will place a check in the appropriate box below that applies to this payment request.

Re: Payment Request No. _____

I, _____ (Name), the _____ (Title - e.g., President, Vice President, etc.) of _____ ("Company"), do state the following with regard to payments made under Contract No. _____ ("Contract"):

1. _____ Subcontractors, at the first tier, both DBE and non-DBE, who completed work and were listed for payment on the prior Payment Request No. _____, were paid no later than thirty (30) business days after Company received payment from TACK.
2. _____ Copies of invoices and cancelled checks for subcontractors at the first tier who were paid under the prior payment request have been delivered or mailed to the DBE Department. In addition, Company has attached to the current Payment Request all lien waivers for prior subcontractor payments and any other documentation required by TACK. (Failure to attach all required documentation to the Payment Request or forward cancelled checks and invoices to the TACK DBE Department may cause the Payment Request to be rejected by TACK.)
3. _____ All retainage amounts withheld from any subcontractor who satisfactorily completed its portion of the contract work, including punch list items, were paid to the subcontractor(s) no later than thirty (30) business days after it satisfactorily completed its work, whether or not TACK has paid said retainage amounts to Company. Attach a copy of the cancelled check evidencing payment of each retainage amount.
4. _____ There was no delay in or postponement of any payment owed to a subcontractor, whether periodic payment or retainage amount, except for good cause and after receipt of prior written approval from the TACK Purchasing Agent.

Attach a copy of the written approval from the TACK Purchasing Agent.

Company Name

Signature

Print Name

Date: _____

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

Notary Public

26. Insurance

Insurance: The contractor shall procure or maintain for the duration of any contract issued pursuant to this proposal a policy or policies of insurance for the protection of the contractor. The Authority requires certification of insurance coverage from all vendors, contractors/subcontractors prior to commencing work.

Contractor shall provide and maintain, and shall require subcontractors, if any, to provide and maintain, with forms and insurers acceptable to TACK and having a Best Rating of not less than A+ (or another rating acceptable to the city) for the following insurance coverage's:

- (a) Insurance protection for Contractor's employees to the extent required by the Workers' Compensation Law of the states where this work will be performed and where same is not applicable or if necessary to provide a defense to TACK, Employers Liability Protection (covering both TACK and Contractor) for Contractor's employees for no less than \$1,000,000 per employee.
- (b) If applicable, Longshoremen's & Harbor Workers' Compensation Act Insurance Coverage imposed by federal statutes having jurisdiction of Contractor's employees while engaged in the performance of the services. The policy shall have a limit of no less than \$1,000,000.
- (c) Commercial General Liability Insurance, written on an occurrence basis only with a combined single limit of no less than \$1,000,000 per occurrence. This insurance shall include coverage for bodily injury, broad form property damage, (including completed operations), personal injury (including contractual and employee acts), blanket contractual, contractor's protective, and products and completed operations. Further, the insurance shall include coverage for the hazards commonly referred to as XCU (explosion, collapse and underground). This coverage should be obtained if the contract involves blasting, excavating, tunneling or other underground work. Said insurance shall contain a severability of interest's provision. The products and completed operations coverage shall extend for (2) years past acceptance, cancellation, or termination of Services.
- (d) Business Automobile Liability Insurance with a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence, with respect to all vehicles used in performance of the services, whether owned, non-owned, leased, hired or assigned.
- (e) If applicable, Aircraft Public Liability Insurance, covering fixed wing and rotorcraft aircraft, whether owned, non-owned, leased, hired or assigned with a combined single limit for bodily injury and property damage, including passenger liability coverage of no less than \$5,000,000.
- (f) If applicable, Builders Risk Insurance in the amount of 100 percent of the contract amount of the building or buildings to be constructed. Unless otherwise specified, the Contractor shall provide and maintain a builders risk policy inclusive of fire, extended coverage, vandalism and malicious mischief insurance. The policy will cover the interest of TACK and the contractor and a certificate of insurance evidencing such coverage shall be secured and presented to TACK prior to the start of construction.

The policies required by this section shall be endorsed to include TACK as additional insured's

and shall stipulate that the insurance shall be primary insurance and that any insurance carried by TACK, its directors, officers, public officials or employees shall not be contributory insurance.

Contractor and its insurers providing the required coverage's shall waive all rights of recovery against TACK and its directors, officers, public officials, employees and agents.

Prior to commencing any services under this contract, Contractor will furnish TACK with certificates of insurance issued by Contractor's insurer(s), as necessary, in a form acceptable to TACK, as evidence that the insurance policies, including all applicable endorsements, providing the required coverage's, conditions, and limits required by the section are in full force and effect. TACK also reserves the right to request and receive certified copies of any and all such Insurance policies and or endorsements.

TACK shall not be obligated however to review such insurance certificates, policies and endorsements, or to advise Contractor of any deficiencies in such documents, and such receipt shall not relieve Contractor from or be deemed a waiver of TACK's right to insist on strict fulfillment of Contractor's obligations herein. Contractor's Certificates of Insurance shall provide for no less than thirty days advance notice of cancellation, termination or alteration. All such certificates, endorsements and notices shall be sent directly to TACK.

27. Indemnification

In matters under the sole control of the contractor the Contractor agrees to protect, defend, indemnify and hold the Authority, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees (including attorney's fees) or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this agreement and/or the performance hereof. Without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his/her sole expense and agrees to bear all other costs and expenses related thereto, even if such claim is groundless, false or fraudulent.

28. Disclaimer of Liability

The Authority will not hold harmless or indemnify any contractor for any liability whatsoever, except those arising out of circumstances under the sole control of the Authority or where it is determined there is a shared liability.

29. Safety

All practices, materials, supplies, and equipment shall comply with the Federal Occupational Safety and Health Act, as well as any pertinent Federal, State and/or local safety or environmental codes.

30. Governing Law

All contractual agreements shall be subject to, governed by, and construed according to the laws of the Commonwealth of Kentucky.

31. Licenses and Permits

The successful Contractor shall be appropriately licensed for the work required as a result of the contract. The cost for any required licenses or permits shall be the responsibility of the Contractor. Contractor is liable for any and all taxes due as a result of the contract.

32. Assignment/Transfer of Interest

There shall be no assignment/transfer of interests or delegation of Contractor's or Authority's rights, duties, or responsibilities of Contractor under the contract derived from this Proposal without the prior written approval of the/all contracting parties.

33. Regulatory Requirements

The Contractor shall comply with all Federal, State, and local licensing and/or regulatory requirements (including permits) for the provision of transit services.

34. Severability

In the event any provision of the contract is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the contract and each provision of the contract will be and is deemed to be separate and severable from each other provision.

35. Covenant Against Gratuities

If awarded the contract the contractor will warrant that he/she has not offered or given gratuities (in the form of entertainment gifts, or otherwise) to any official or employee of the Authority with a view toward securing favorable treatment in the award, amendment or performance evaluation of the contract.

36. Approved Equal

In all cases, materials must be furnished as specified. Where brand names or specific items are used in specifications, consider the term "or approved equal" to follow. Any unapproved deviations, exceptions, substitutions, alternates, or conditional qualifications contained in a proposal may be cause for its rejection. If a potential Proposer feels that his product is an equal to the product specified, he must submit a written request to the Authority. Requests for approved equals, clarification of specifications, and protest of specifications must be received by the Authority in writing on or before Monday, March 4, 2019 at 5:00 p.m. EST to allow analysis of the request.

Any request for any approved equal or protest of the specifications must be fully supported with catalog information, specifications and illustrations or other pertinent information as evidence that the substitute offer is equal to or better than the specification's requirement. Where an approved equal is requested, the Contractor must demonstrate the equality of his product to the Agency and must furnish sufficient information to enable the Agency to determine whether the Contractor's product is or is not equal to that specified.

The Authority's replies to requests under this section above will be delivered, (via email, fax or other agreed-upon method) at least seven days before the date scheduled for proposal opening.

37. Single Proposal Response

If only one proposal is received in response to the request for proposals, a detailed cost proposal may be requested of the single proposer. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

38. Eligibility for Award

In order to be eligible for award, offerors must be responsive and responsible.

- a. Responsive offers are those complying in all material aspects of the solicitation, both as to the method and timeliness of submission and as to the substance of the resulting contract. Offers which do not comply with all the terms and conditions of the solicitation may be rejected as non-responsive.
- b. Responsible offerors are those prospective contractors who must at a minimum: (1) have adequate financial resources or the ability to obtain such resources as required during performance of the contract; (2) are able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments; (3) have a satisfactory record of past performance; (4) have necessary technical capability to perform.

39. Prohibited Interest

No member, officer, or employee of the public body, commission, or locality during their tenure or for one year thereafter will have any interests direct or indirect in this contract or the proceeds thereof.

40. Interest of Member or Delegates to Congress

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

41. Non-Collusion

The proposer guarantees that the proposal submitted is not a product of collusion with any other proposer and no effort has been made to fix the price of any proposal or to fix any overhead, profit or cost element of any proposed price.

42. Pricing

The price to be quoted in any proposal submitted shall include all labor, materials, tools, equipment, and other costs necessary to fully complete the manufacture, delivery and installation of the item pursuant to the specifications. Anything omitted from such specifications which are clearly necessary for the completion of the item and its appurtenances shall be considered a portion of the proposal although not directly specified or called for in these specifications. All parts shall be new and in no case will used, reconditioned, or obsolete parts be accepted unless otherwise specified. Proposer should note discounts, if any.

43. Late Submissions, Modifications and Withdrawals of Offers

1. Any proposal, modification, or revision, that is received at the designated TACK office after the exact time specified for receipt of proposals is “late” and will not be considered, unless it is received before award is made, the contracting officer determines that accepting the late proposal would not unduly delay the acquisition; and
 - A. There is acceptable evidence to establish that it was received at the TACK office designated for receipt of proposals and was under TACK’s control prior to the time set for receipt of proposals; or
 - B. It was the only proposal received.
2. However, a late modification of an otherwise successful proposal, that makes its terms more favorable to TACK, will be considered at any time it is received and may be accepted.
3. Acceptable evidence to establish the time of receipt at the TACK office includes a time/date stamp or handwritten notation of personnel in that office on the proposal wrapper, other documentary evidence of receipt maintained by the office, or oral testimony or statements by TACK personnel.
4. If an emergency or unanticipated event interrupts normal TACK processes, so that proposals cannot be received at the TACK office designated for receipt of proposals by the exact time specified in the solicitation and urgent TACK requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which the TACK office is open to the public.
5. Proposers may withdraw a proposal or modification thereof by written notice to the Procuring Official at any time prior to the time specified for receipt of proposals or modifications. Notice may be electronic, provided a hard copy of the notice is delivered within 24 hours of the electronic transmission. A proposal or modification may be resubmitted prior to the time specified for receipt.

44. Protest Procedures

Protests will only be accepted from prospective Proposers whose direct economic interest would be affected by the award of a contract to the refusal to award a contract. The Procurement Manager will receive and then forward all proposal protests to the General Manager who will

consider the protest, whether submitted before or after the award of a contract. The only exception to this procedure is in the case where the selection of a management company is involved; in this instance the protests will be forwarded to the Chairman of the Authority Board. If oral objections are raised and then cannot be resolved, the protest must then be made in writing before any further consideration can be given.

Protests must be concise, logically arranged, and clearly state the grounds for protest. Protests must include, at least, the following information:

- Name, address, and telephone number of protester
- Identification of the solicitation
- A detailed statement of the legal and factual grounds of the protest
- A statement as to what relief is requested

All protests documents received shall be stamped with the date and time by the Procurement manger and logged into a protest file.

TACK will respond, in detail, to each substantive issue raised in the protest. TACK's determination will be final. TACK will allow a request for reconsideration if data becomes available that was not previously known, or there has been an error of law or regulation.

Protests Before Award: Protests before award must be submitted within the time frame as specified below. If the written protest is not received by the time specified, the evaluation process shall continue in the normal manner, unless the General Manager upon investigation finds that remedial action is desirable, in which event such action shall be taken.

The protests addressing the adequacy of invitation for Bids, RFPs, including, without limitation, the pre-award procedure, the instructions to Proposers, General Terms and Conditions, Specifications and Scope of work must be filed at 3375 Madison Pike, Ft. Wright, KY 41017 no later than three days before proposal date. Thereafter, such issues are deemed waived by all interested parties.

Notice of a protest and the basis therefore shall be given to all Proposers or offerors. In addition, when a protest against the making of an award is received, and the General Manager determines to withhold the award pending disposition of the protest, the Proposers (whose proposals might become eligible for award) shall be requested, before expiration of the time for acceptance of their proposals, to extend the time for acceptance (with consent of sureties, if any) to avoid the need for re-advertising.

A written protest against the making of an award must be received by the Procurement Manager, at least, ten (10) days prior to the scheduled contract award date.

Where written protest against the making of an award is received, award shall not be made until five (5) days after the matter is resolved, unless the General Manager determines that:

- The items to be procured are urgently required; or
 - Delivery or performance will be unduly delayed by failure to make the award promptly; or
- Failure to make prompt award will otherwise cause undue harm to the Authority or the State or the Federal Government.

In the event the General Manager determines that the award is to be made during the five-day period or during the pendency of a protest, he or she shall notify FTA prior to making such award. FTA reserves the right not to participate in such procurement.

If award is made, the Authority shall document the file to explain the need for an award and shall give written notice of the decision to proceed with the award to the protester and, as appropriate, to others concerned.

Protest After Award: Protest against award must be filed at the Authority's office within five (5) days immediately following the award. The protest shall be received by the Procurement Manager. However, although the number of persons involved in or affected by the filing of a protest may be limited in instances where an award has been made, the Contractor shall in any event be furnished with the notice of protest and the basis therefore. Also, when it appears likely that an award may be invalidated and a delay in receiving the supplies or service is not prejudicial to the Authority's interest, the General Manager shall consider a mutual agreement with the contractor to suspend performance on a no-cost basis.

Decision on the Protest: The General Manager shall render his or her decision in writing within fourteen (14) days from the receipt of the written protest and shall provide notice of such decision to all interested parties.

Following an adverse decision by the General Manager, the Protestor may file a protest with the Federal Transit Administration (FTA).

FTA's Review of Protests: FTA will only review protests regarding the alleged failure of the authority to have written protest procedures or alleged failure to follow such procedures.

Alleged violations on other grounds are under the jurisdiction of the appropriate State or local administrative or judicial authorities. Alleged violations of a special Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal regulation. See, e.g., Buy America Requirements, 49 CFR Part 661 (Section 661.15); Participation by Minority Business Enterprise in Department of Transportation Programs, 49 CFR Section 23.73.

FTA will only review protests submitted by an interested party as defined below.

FTA's Remedy: FTA's remedy for the Authority's failure to have written protest procedures or failure to follow such procedure is limited to requiring the Authority to develop such procedures, if necessary, and follow such procedures in reviewing the protest at issue, if the Authority desires FTA financial participation in the contract in question. In instances where the Authority has awarded to another Proposer or offeror, or prior to FTA's decision on the protest, FTA may refuse to participate in funding the contract.

Definitions: For the purposes of this section, the following definitions apply:

- "Days" refers to working days of the Federal Government.
- "File" or "submit" refers to the date of receipt by the General Manager or RTA, as the case may be.

- “Interested party” means an actual or prospective Proposer or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

Time for Filing with FTA: Protestors shall file a protest with FTA no later than five (5) days after a final decision is rendered under protest procedure. In instances where the protestor alleges that the Authority failed to make a final determination on the protest, protestors shall file a protest with FTA no later than five (5) days after the protestor knew or should have known of Authority failure to render a final determination on the protest. The Authority shall not award a contract for five (5) days following its decision on a proposal protest except in accordance with the provisions and limitations set forth above. After five (5) days, the Authority shall confirm with FTA that FTA has not received a protest on the contract in question.

Submission of Protest to FTA:

- Protests should be filed with the appropriate FTA Regional Office with a concurrent copy to: The Transit Authority of Central Kentucky
1209 N. Dixie Highway
Elizabethtown, KY 42701
- The protest filed with FTA shall:
 1. Include the name and address of the protestor;
 2. Identify the authority (the FTA grantee), project number (if applicable) and the number of the contract solicitation;
 3. Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures, and be fully supported to the extent possible; and
 4. Include a copy of the local protest filed with the Authority and a copy of the Authority’s decision, if any.

Authority’s Response:

- FTA shall notify the Authority in a timely manner of the receipt of a protest. FTA shall instruct the Authority to notify the contractor of the protest if an award has been made or, if no award has been made, to notify all interested parties. The Authority shall instruct all who receive such notice that they may communicate further directly with FTA.
- The Authority shall submit the following information to FTA no later than ten (10) days after receipt of notification by FTA of the protest:
 - 1) A copy of the protest procedure;
 - 2) A description of the process followed concerning the protestor’s protest; and
 - 3) Any supporting documentation.
- The Authority shall provide the protestor with a copy of the above submission to FTA.

Protestor’s Comments: The protestor must submit any comments on the Authority’s submission no later than ten (10) days after the protestor’s receipt of submission.

Withholding of Award: When a protest has been timely filed with the Authority before award, the Authority shall not make an award prior to five (5) days after the resolution of the protest, or if a protest has been filed with FTA, during the pendency of that protests, unless the Authority determines that:

- The items to be procured are urgently required;

- Delivery or performance will be unduly delayed by failure to make the award promptly; or
- Failure to make prompt award will otherwise cause undue harm to the Authority or the Federal Government.
- In the event that the Authority determines that the award is to be made during the five-day period following the local protest decision or pendency of a protest, the Authority shall notify FTA prior to making such award. FTA will not review the sufficiency of the Authority's determination to award during the pendency of a protest prior to FTA's proposal protest decision. FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

FTA's Action: Upon receipt of the submission, FTA will either request further information or a conference among the parties, or will render a decision on the protest.

45. Personal Information / Security

In accordance with KRS 61.932, if the Proposer, in carrying out the work of this contract, has access to, possesses, or maintains "personal information," as a part of that contract, shall implement, maintain, and update security and breach investigation procedures and practices that are appropriate to the nature of the information disclosed. Such procedures and practices shall be designed to protect the personal information from unauthorized access, use, modification, disclosure, manipulation, or destruction and shall be at least as stringent as the security and breach investigation procedures and practices established by the Kentucky Department for Local Government in Protection of Personal Information, Security and Incident Investigation Procedures and Practices for Local Governmental Units, Fall 2014 edition.

A Proposer that is provided access to personal information by the procuring agency, or that collects and maintains personal information on behalf of the procuring agency as a part of this contract shall notify the procuring agency in the most expedient time possible and without unreasonable delay but within seventy-two (72) hours of determination of a security breach relating to the personal information in the possession of the Proposer. The notice to the procuring agency shall include all information the Proposer has with regard to the security breach at the time of notification. The cost of the notification and investigation of a security breach required by KRS 61.933 shall be borne by the Proposer.

The term "personal information" means an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- (a) An account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;
- (b) A Social Security number;
- (c) A taxpayer identification number that incorporates a Social Security number;
- (d) A driver's license number, state identification card number, or other individual identification number issued by any agency;
- (e) A passport number or other identification number issued by the United States government; or

(f) Individually identifiable health information as defined in 45 C.F.R. sec. 160.103 except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. sec. 1232g.

46. Veterans Hiring Preference

TACK and its sub recipients are recipients of federal financial assistance in this contract. The contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5 CFR) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed, or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.”

SPECIAL PROVISIONS FOR CONSTRUCTION PROJECTS

The following are additional construction related clauses to the General Terms and Conditions for this contract and apply to this solicitation:

1. DIFFERING SITE CONDITIONS

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of: (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract; or (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in Work of the character provided for in the Contract. The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under the Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract modified in writing accordingly.

(b) No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer. No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under the Contract.

2. EXECUTION OF WORK

The Work shall be executed strictly according to the Drawings and Specifications referred to in the Contract Documents and such explanations and supplementary drawings, Architect/Engineer approved shop drawings, and physical samples as may become necessary.

In case of ambiguities or inconsistencies within the Contract Documents, specific details and descriptions will govern over general details and description.

To assure the proper execution of the Work, the Contractor shall verify all dimensions as shown on Drawings and take all measurements at the work site and be responsible for their use in preparing shop drawings and the assembly of material.

Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in Drawings or Specifications, the explanation of TACK shall be final and binding on the Contractor.

Any correction, of an error or omission in Drawings or Specifications, may be made by TACK when such correction is necessary for the proper fulfillment of their intention.

3. SUBCONTRACTORS

Whether the contract is sublet or whether hired equipment is engaged under this Contract, it shall be the Contractor's responsibility to fulfill all the terms of the Contract and provide satisfactory evidence that the prevailing wage rates are being paid to all personnel engaged on the site, whether the Contractor's own, those of a Subcontractor, or anyone directly or indirectly employed by either the Contractor or Subcontractor.

4. BONDING

Each bidder shall be required to provide, with the bidder's bid, a bid bond provided by a surety company authorized to do business in the Commonwealth of Kentucky, for an amount equal to five percent of the bidder's bid. Bid bonds shall be forthwith returned to the bidder in case the contract is awarded to another bidder, or, in case of a successful bidder, when the bidder has entered into a contract and furnished the bonds required by section 45A.190 of the Kentucky Revised Code.

Section 45A.190 of the KRC, requires a contract performance bond and a payment bond with sufficient sureties executed by a surety company authorized to do business in the Commonwealth of Kentucky, as follows:

- (1) A contract performance bond in an amount equal to one hundred per cent of the contract amount, conditioned, among other things, that the contractor will perform the work upon the terms proposed, within the time prescribed, and in accordance with the plans and specifications, will indemnify the state against any damage that may result from any failure of the contractor to so perform and against any damage that may result by reason of the negligence of the contractor in making the improvement.
- (2) A payment bond in an amount equal to one hundred per cent of the contract amount, conditioned for the payment by the contractor and all subcontractors for labor or work performed or materials furnished in connection with the work, improvement, or project involved.

5. TACK INSPECTORS

TACK or its authorized representatives shall at all times have unrestricted access to all parts of the Work and other places at and in which the preparation of the materials and the construction of the different parts of the Work to be done under the Contract are carried on and conducted, and shall be given by the Contractor all facilities and assistance required to carry out their work.

6. PERMITS AND FEES

The Contractor shall be fully responsible for any and all required permits and secure and pay for all such permits and fees, licenses, and inspections necessary for the proper execution of the work. The actual cost of the construction permit is a pass through cost to TACK. Upon request, and/or with the submittal of a final invoice, contractor shall provide TACK with copies of such documents.

7. WORK CHANGE NOTICE

The following applies to any modifications to the contract:

A. Determining Costs

Any changes to the Contract Documents involving changes in Contract Price and/or Contract Time shall be processed as follows:

The Contractor shall submit a written proposal, with a complete itemized breakdown, detailed to show quantities and unit costs of material, labor hours and labor costs per hour, for TACK's acceptance by adding or deducting an amount utilizing unit prices as stated previously in the Contract, or subsequently to be agreed upon by TACK and the Contractor.

Should additional Drawings and Specifications be required for contract modifications, TACK shall provide the details and specifications to the Contractor with a request for a proposal from the Contractor. The Contractor shall submit proposal as outlined above.

B. Change Order

If the Contractor's price proposal is accepted, TACK shall prepare a written Work Change Notice for the Contractor's execution and for TACK's approval, modifying the Contract Documents.

The written work change notice order shall be signed by the Contractor and TACK, and submitted to the Procurement Department.

A Change Order will be issued by the TACK Procurement Department.

C. Disagreement over Value of Work

If the Contractor's price proposal is rejected TACK shall instruct the Contractor, in writing, to resubmit a revised price proposal and also to proceed with the construction modifications. Negotiation on revision order price disagreements shall proceed simultaneously with the implementation of the construction modification. After agreement on a price proposal has been reached, TACK shall issue a written Work Change Notice modifying the Contract Documents.

Should TACK and Contractor be unable to agree as to the value of the Work to be added, deleted or revised, the Contractor shall proceed with the work promptly under the written order of TACK from which order the stated value of Work shall be omitted. In the case of omitted Work, TACK shall have the right to withhold from payments due or to become due to the Contractor an amount which in TACK's opinion is equal to the value of such Work until such time as the value thereof is determined by agreement.

8. PROTECTION OF WORK

The Contractor shall adequately protect the work, adjacent property, the work of other Contractors, and the public, and shall be responsible for any damage or injury due to the Contractor's act or neglect.

The Contractor shall be entirely responsible for all work, apparatus, equipment and appurtenances provided by the Contractor in connection with this Work, until date of final acceptance, and special care shall be taken to protect against vandalism, theft, and accidental damage.

Any damage done to the Contractor's Work or the work of others shall be corrected by the Contractor at the Contractor's own expense.

9. TRANSPORTATION AND PROTECTION OF EQUIPMENT AND MATERIALS

The Contractor shall furnish all transportation for equipment and materials, and shall be fully responsible for its safe transport and storage at the site, including taking whatever measures are necessary for the protection and security of equipment and materials.

The Contractor, in making or ordering shipments, shall not consign or have consigned materials, equipment or any other items in the name of TACK. TACK shall not be under any obligation to make payment for charges on shipments made by or to the Contractor.

10. NEW MATERIALS

The Contractor warrants to TACK and any Architect/Engineer that is part of the project, that all materials and equipment furnished under the Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by TACK or Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

11. CONTRACTOR'S ACCEPTANCE OF OTHER'S WORK

If any part of the Contractor's Work depends upon the work of any other separate Contractor, the Contractor shall inspect and promptly report, in writing, to TACK any apparent discrepancies or defects in such work that render it unsuitable for the Contractor to proceed.

Failure of the Contractor to inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper to receive its Work, except as to defects which may develop in the other separate Contractor's work after the execution of the Contractor's Work.

12. CUTTING, PATCHING

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of TACK or separate Contractors by cutting, patching, excavation or otherwise altering such construction. The Contractor shall not cut or otherwise alter such

construction by TACK or a separate Contractor except with written consent of TACK and of such separable Contractor. Such consent shall not be unreasonably withheld.

The Contractor shall not unreasonably withhold from TACK or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. Any costs caused by defective or ill-timed Work shall be borne by the party responsible therefor.

13. CLEANING OF GROUNDS AND PREMISES

Daily during the course of its Work each Contractor shall remove all refuse created by the Contractor; at all times keep the premises free from accumulation of waste material caused by its employees, and at completion of the Work remove all rubbish from the site and leave the area broom clean.

All clean-up is to be approved by TACK before acceptance. If the Contractor fails to clean up, TACK, after due notice, may do so and the cost thereof shall be charged to the Contractor.

14. CONTRACTOR RESPONSIBLE FOR COMPLETENESS OF WORK

The Contractor is responsible for completing the Work as described in the Contract Documents. This includes any and all incidentals, whether identified or not, that are considered typical and pertinent to the completion of the work and its components.

TACK is not responsible for guiding the Contractor through the Work. It is the responsibility of the Contractor to ensure that the requirements of the Contract Documents are met, and that the Work is done in accordance with proper practice, efficiently, professionally, and completely. TACK shall not release the Contractor from this responsibility.

Under no circumstances shall the failure of TACK to note or detect any deficiency during the course of the Work be considered a waiver by TACK of any contract term or condition.

15. REJECTED MATERIAL AND DEFECTIVE WORK

TACK Inspectors shall have authority to reject any work, materials, and parts thereof, which do not conform to the Contract Documents.

All rejected materials shall be removed immediately from the vicinity of the Work.

All defective work shall be promptly replaced and made satisfactory to TACK and the Architect/Engineer by the Contractor at the Contractor's expense.

At the request of TACK's Inspector the Contractor shall remove any portion of the completed Work in progress, as TACK's Inspector may, from time to time, think necessary for the discovery of improper materials or workmanship, and the Contractor shall restore such work at its own expense.

TACK will pay for restored work if no evidence of improper materials or workmanship is found, as a modification to the Contract.

16. OSHA REGULATIONS

The Contractor shall be responsible for compliance with all OSHA, ODOT, and other local safety regulations applicable to this contract.

17. DAVIS BACON AND COPELAND ANTI-KICKBACK ACTS

17.1 RELATED DOCUMENTS

- A. Exhibit B – Wage Determination KY190095 Dated 02/15/2019

Davis-Bacon and Copeland Anti-Kickback Acts. With respect to all construction contracts and subcontracts over two thousand dollars (\$2,000) at least partly financed by a loan or grant from the Federal Government, and including contracts for actual construction, alteration and/or repair, including painting and decorating, the following provisions shall apply.

A. Minimum wages.

All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under

the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 C.F.R. 5.2(n)(4), such a classification prevails in the area in which the work is performed.

If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(ii)(B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The Work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(v)(B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

B. Withholding.

TACK shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under the Contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, TACK may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and basic records.

Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to TACK for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5.

This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office,

Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into the Contract.

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (c)(i)(B) of this section.

The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

D. Apprentices

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

appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire Work force under the registered program.

Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

E. Trainees.

Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the

classification of Work actually performed. In addition, any trainee performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

F. Equal employment opportunity.

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

G. Compliance with Copeland Act requirements.

The Contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated by reference in the Contract.

H. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the Contract clauses in 29 C.F.R. 5.5.

I. Contract termination: debarment.

A breach of the Contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.

J. Compliance with Davis-Bacon and Related Act requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in the Contract.

K. Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.

L. Certification of eligibility.

By entering into the Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

END OF SPECIAL PROVISIONS FOR CONSTRUCTION CONTRACTS